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Thursday  
December 1, 1988

# Estados Unidos Federal Reserve



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Federal Register

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## MERIT SYSTEMS PROTECTION BOARD

### 5 CFR Part 1201

#### Practices and Procedures; Regional Office Address Correction

**AGENCY:** Merit Systems Protection Board.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Merit Systems Protection Board is correcting the address of the Seattle Regional Office as listed in 5 CFR Part 1201, Appendix II, item number 10.

**EFFECTIVE DATE:** December 1, 1988.

**FOR FURTHER INFORMATION CONTACT:** Mark Kelleher, Deputy Executive Director for Regional Operations, (202) 653-7980.

#### SUPPLEMENTARY INFORMATION:

##### List of Subjects in 5 CFR Part 1201

Administrative practice and procedures, Civil rights, Government employees.

Accordingly the Board amends Part 1201 as follows:

#### PART 1201—[AMENDED]

1. Authority for Title 5 CFR Part 1201 continues to read:

Authority: 5 U.S.C. 1205 and 7701(j).

2. Appendix II to Part 1201, item number 10 in the second paragraph is correctly revised to read as follows:

#### Appendix II to Part 1201—Appropriate Regional Office For Filing Appeals

10. Seattle Regional Office, 915 Second Avenue, Suite 1840, Seattle, Washington

98174-1001 (Alaska, Hawaii, Idaho, Oregon, Washington, Pacific overseas).

Date: November 28, 1988.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 88-27715 Filed 11-30-88; 8:45 am]

BILLING CODE 7400-01-M

## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

#### 7 CFR Part 15

#### Nondiscrimination; Revision of Appendix

**AGENCY:** United States Department of Agriculture (USDA).

**ACTION:** Final rule.

**SUMMARY:** The United States Department of Agriculture has determined that public interest requires greater elaboration on the extent of its programs covered by Civil Rights Laws and Regulations. Hence, the Department is revising and updating the Appendix for Subpart A which lists Federally assisted programs. In addition, the Department is promulgating under Subpart B, a list of direct assistance and Federally conducted programs and activities of the Department covered under agency program statutes.

**EFFECTIVE DATE:** January 3, 1989.

**FOR FURTHER INFORMATION CONTACT:** Anthony M. Thielen, Compliance, Complaints and Adjudication Division, Office of Advocacy and Enterprise, Equal Opportunity, United States Department of Agriculture, Washington, DC 20250, Room 0101-South, phone (202) 447-5543.

**SUPPLEMENTARY INFORMATION:** A proposed rule was published in the Federal Register, May 6, 1988 (53 FR 16283). Three comments relating to Appendix B were received, one noting that an additional program should be included; a second noting an error in the title of a program; and a third noting a program incorrectly listed as two separate programs. The new program is administered by the Agricultural Stabilization and Conservation Service. It is the Colorado Salinity Control

Program, Pub. L. 93-920, 43 U.S.C. 1592, and has been added to Appendix B as number 36. Proposed numbers 36 through 58 have been redesignated as 37 through 59 respectively. The corrected program title is number 53 under Appendix B and has been revised to read "Permits for Use of National Forests and National Grasslands." Numbers 59 and 60 as proposed was one program only, namely, "Meat and Poultry Inspection Operations Program." Hence, proposed number 59 was deleted. The Director, Office of Advocacy and Enterprise, has determined that this regulation is not a major rule as defined by Executive Order 12291, since it is not likely to result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprise to compete with foreign-based enterprises in domestic or export markets. As a result, it is not necessary to prepare a Regulatory Impact Analysis. Furthermore, the Director has determined that this action will not have a significant economic impact on a substantial number of small entities. Therefore, no Regulatory Flexibility Analysis is required.

#### List of Subjects in 7 CFR Part 15

Civil rights, Nondiscrimination.

Accordingly, 7 CFR Part 15, Subpart A and Subpart B are amended as follows:

#### PART 15—[AMENDED]

1. The authority for Part 15 continues to read as follows:

Authority: 78 Stat. 252; 80 Stat. 379; 87 Stat. 394, as amended by 92 Stat. 2955; 42 U.S.C. 2000d-1; 5 U.S.C. 301; 29 U.S.C. 794, unless otherwise noted.

2. Accordingly, the changes and additions have been made as described and the appendices to Subparts A and B are revised to read as follows:

**Subpart A—Nondiscrimination in Federally Assisted Programs of the Department of Agriculture—Effectuation of Title VI of the Civil Rights Act of 1964****Appendix to Subpart A—List of USDA-Assisted Programs**

Programs administered by the U.S. Department of Agriculture in which Federal financial assistance is rendered, include but are not limited to the following:

Program	Authority
<b>Administered by the Agricultural Cooperative Service</b>	
1. Cooperative Development.....	Cooperative Marketing Act of 1926, 7 U.S.C. 451 et seq. Agricultural Marketing Act of 1946, as amended, 7 U.S.C. 1621 et seq.
<b>Administered by the Agricultural Marketing Service</b>	
2. Federal-State marketing improvement program.....	Agricultural Marketing Act of 1946, Section 204b, 7 U.S.C. 1623(b).
<b>Administered by the Agricultural Research Service</b>	
3. Soil and Water Conservation.....	7 CFR 3015.205(b); Department of Agriculture Organic Act of 1862 (7 U.S.C. 2201); the Agricultural Marketing Act of 1946, as amended, (7 U.S.C. 427, 1621) and the Food Security Act of 1985 (7 U.S.C. 1281 et seq).
4. Animal Productivity.....	7 CFR 3015.205(b); Department of Agriculture Organic Act of 1862; (7 U.S.C. 2201); the Agricultural Marketing Act of 1946, as amended, (7 U.S.C. 427, 1621) and the Food Security Act of 1985 (7 U.S.C. 1281 et seq).
5. Plant Productivity.....	7 CFR 3015.205(b); Department of Agriculture Organic Act of 1862, (7 U.S.C. 2201); the Agricultural Marketing Act of 1946, as amended, (7 U.S.C. 427, 1621) and the Food Security Act of 1985 (7 U.S.C. 1281 et seq).
6. Commodity Conversion and Delivery.....	7 CFR 3015.205(b); Department of Agriculture Organic Act of 1862 (7 U.S.C. 2201); the Agricultural Marketing Act of 1946, as amended, (7 U.S.C. 427, 1621) and the Food Security Act of 1985 (7 U.S.C. 1281 et seq).
7. Human Nutrition.....	7 CFR 3015.205(b); Department of Agriculture Organic Act of 1862 (7 U.S.C. 2201); the Agricultural Marketing Act of 1946, as amended, (7 U.S.C. 427, 1621) and the Food Security Act of 1985 (7 U.S.C. 1281 et seq).
8. Integration of Agricultural Systems.....	7 CFR 3015.205(b); Department of Agriculture Organic Act of 1862 (7 U.S.C. 2201); the Agricultural Marketing Act of 1946, as amended, (7 U.S.C. 427, 1621) and the Food Security Act of 1985 (7 U.S.C. 1281 et seq).
<b>Administered by the Agricultural Stabilization and Conservation Service</b>	
9. Price support programs operating through producer associations, cooperatives and other recipients in which the recipient is required to furnish specified benefits to producers (e.g. tobacco, peanuts, cotton, rice, honey, dry edible beans, tung oil, naval stores and soybeans price support programs).	Agricultural Adjustment Act of 1938, 7 U.S.C. 1301-1393; Pub. L. 73-430; Commodity Credit Corporation Charter Act, 15 U.S.C. 714 et seq.; Agricultural Act of 1949, as amended; 7 U.S.C. 1421, et seq.; Pub. L. 81-439, as amended; Agriculture and Food Act of 1961; Pub. L. 97-98; Dairy and Tobacco Adjustment Act of 1983; Pub. L. 98-180; Agricultural Programs Adjustment Act of 1984; Pub. L. 98-258; Food Security Act of 1985; Pub. L. 99-198.
<b>Administered by Cooperative State Research Service</b>	
10. 1890 Research Facilities.....	Sec. 1433 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, Pub. L. 95-113, as amended; 7 U.S.C. 3195.
11. Payments to 1890 Land-Grant Colleges and Tuskegee Institute.	Sec. 1445 of the National Agricultural Research, Extension and Teaching Policy Act of 1977; Pub. L. 85-113, as amended; 7 U.S.C. 3222.
12. Cooperative Forestry Research (McIntire-Stennis Act).	Cooperative Forestry Research Act of October 10, 1962; Pub. L. 87-788; 16 U.S.C. 582a-582q-7.
13. Payments to Agricultural Experiment Stations under Hatch Act.	Hatch Act of 1887, as amended; 7 U.S.C. 361a-361i.
14. Grants for Agricultural Research Competitive Research Grants.	Sec. 2(b) of Pub. L. 89-106; 7 U.S.C. 450i(b), as amended.
15. Grants for Agricultural Research, Special Research Grants.	Sec. 2(c) of Pub. L. 89-106; 7 U.S.C. 450i(c), as amended.
16. Animal Health and Disease Research.....	National Agricultural Research, Extension and Teaching Policy Act of 1977, Sec. 1433, Pub. L. 95-113, as amended; 7 U.S.C. 3195.
<b>Administered by Extension Service</b>	
17. Home Economics.....	Smith-Lever Act, as amended; 7 U.S.C. 341-349; District of Columbia Post-secondary Education Reorganization Act, D.C. Code, Sec. 31-1518; Title V, Rural Development Act of 1972, as amended; 7 U.S.C. 2661, et seq. Sec. 14, Title 14, National Agricultural Research, Extension and Teaching Policy Act of 1977; Pub. L. 95-113, as amended.
18. 4-H Youth Development.....	Smith-Lever Act, as amended; 7 U.S.C. 341-349; District of Columbia Public Postsecondary Education Reorganization Act, D.C. Code, Sec. 31-1518; Title VI, Rural Development Act of 1972, as amended; 7 U.S.C. 2661, et seq.; Sections 1425 and 1444, National Agricultural Research, Extension and Teaching Policy Act of 1977; Pub. L. 95-113, as amended; 7 U.S.C. 3221, 3175; Pub. L. 96-374, Sec. 1361(c); 7 U.S.C. 301 note; Pub. L. 97-98, Agriculture and Food Act of 1981, sec. 1401.
19. Agricultural and Natural Resources.....	Smith-Lever Act, as amended; 7 U.S.C. 341-349; District of Columbia Public Postsecondary Education Reorganization Act, D.C. Code, Sec. 31-1518; Title V, Rural Development Act of 1972, as amended; 7 U.S.C. 2661, et seq.; Sec. 14, National Agricultural Research, Extension and Teaching Policy Act of 1977; Pub. L. 95-113, as amended; 7 U.S.C. 3101, et seq.
20. Community Resource Development.....	Smith-Lever Act, as amended; 7 U.S.C. 341-349; District of Columbia Public Postsecondary Education Reorganization Act, D.C. Code 31-1518; Title V, Rural Development Act of 1972, as amended; 7 U.S.C. 2661, et seq.; National Agricultural Research, Extension and Teaching Policy Act of 1977; Pub. L. 95-113, as amended; 7 U.S.C. 3101, et seq.; Renewable Resources Extension Act of 1978; 16 U.S.C. 1671-1676.
<b>Administered by Federal Crop Insurance Corporation</b>	
21. Crop Insurance.....	Federal Crop Insurance Act, as amended; 7 U.S.C. 1501-1520; Title V of the Agricultural Adjustment Act of 1938; 52 Stat. 31 and Federal Crop Insurance Act of 1980; Pub. L. 96-385 (Sept. 26, 1980); 94 Stat. 1312-1319.

Program	Authority
<b>Administered by Farmers Home Administration</b>	
22. Farm Ownership Loans to install or improve recreational facilities or other nonfarm enterprises.	Section 302 of the Consolidated Farm and Rural Development Act, as amended; 7 U.S.C. 1923.
23. Farm Operating Loans to install or improve recreational facilities or other nonfarm enterprises.	Sec. 312 of the Consolidated Farm and Rural Development Act, as amended; 7 U.S.C. 1942.
24. Community Facility Loans.....	Sec. 306 of the Consolidated Farm and Rural Development Act, as amended; 7 U.S.C. 1926.
25. Rural Rental Housing and related facilities for elderly persons and families of low income.	Sec. 515, Title V, Housing Act of 1949, as amended; 42 U.S.C. 1485.
26. Rural Cooperative Housing.....	Sec. 515, Title V, Housing Act of 1949, as amended; 42 U.S.C. 1485.
27. Rural Housing Site Loans.....	Sec. 524, Title V, Housing Act of 1949, as amended; 42 U.S.C. 1490d.
28. Farm and Labor Housing Loans.....	Sec. 514, Title V, Housing Act of 1949, as amended; 42 U.S.C. 1484.
29. Farm Labor Housing Grants.....	Sec. 516, Title V, Housing Act of 1949, as amended; 42 U.S.C. 1486.
30. Mutual self-help housing grants. (Technical assistance grants).	Sec. 523, Title V, Housing Act of 1949, as amended; 42 U.S.C. 1490c.
31. Technical and supervisory assistance grants.....	Sec. 525, Title V, Housing Act of 1949, as amended; 42 U.S.C. 1490a.
32. Individual Recreation Loans.....	Sec. 304 of the Consolidated Farm and Rural Development Act, as amended; 7 U.S.C. 1924.
33. Recreation Association Loans.....	Sec. 308 of the Consolidated Farm and Rural Development Act, as amended; 7 U.S.C. 1926.
34. Private enterprise grants.....	Sec. 310(B)(c) of the Consolidated Farm and Rural Development Act, as amended; 7 U.S.C. 1932(c).
35. Indian Tribal Land Acquisition Loans.....	Pub. L. 91-229, approved April 11, 1970; 25 U.S.C. 488.
36. Grazing Association Loans.....	Sec. 306 of the Consolidated Farm and Rural Development Act, as amended; 7 U.S.C. 1926.
37. Irrigation and Drainage Associations.....	Sec. 306 of the Consolidated Farm and Rural Development Act, as amended; 7 U.S.C. 1926.
38. Area development assistance planning grant program.	Sec. 306(a)(11) of the Consolidated Farm and Rural Development Act, as amended; 7 U.S.C. 1926(a)(11).
39. Resource conservation and development loans.....	Sec. 32(e) of Title III, the Bankhead-Jones Farm Tenant Act; 7 U.S.C. 1011(e).
40. Rural Industrial Loan Program.....	Sec. 310B of the Consolidated Farm and Rural Development Act, as amended; 7 U.S.C. 1932.
41. Rural renewal and resource conservation development, land conservation and land utilization.	Sec. 31-35, Title III, Bankhead-Jones Farm Tenant Act; 7 U.S.C. 1010-1013a.
42. Soil and water conservation, recreational facilities, uses; pollution abatement facilities loans.	Sec. 304 of the Consolidated Farm and Rural Development Act, as amended; 7 U.S.C. 1924.
43. Watershed protection and flood prevention program.	Sec. 1-12 of the Watershed Protection and Flood Prevention Act, as amended; 16 U.S.C. 1001-1008.
44. Water and Waste Facility Loans and Grants.....	Sec. 306 of the Consolidated Farm and Rural Development Act, as amended; 7 U.S.C. 1926.
<b>Administered by Food and Nutrition Service</b>	
45. Food Stamp Program.....	The Food Stamp Act of 1977, as amended; 7 U.S.C. 2011-2029.
46. Nutrition Assistance Program for Puerto Rico. This is the Block Grant signoff of the Food Stamp Program for Puerto Rico.	The Food Stamp Act of 1977, as amended; Sec. 19, 7 U.S.C. 2028.
47. Food Distribution (Food Donation Program). (Direct Distribution Program).	Sec. 32, Pub. L. 74-320; 49 Stat. 744 (7 U.S.C. 612c); Pub. L. 75-165, 50 Stat. 323 (15 U.S.C. 713c); secs. 6, 9, 60 Stat. 231, 233, Pub. L. 79-396 (42 U.S.C. 1755, 1758); sec. 416, Pub. L. 81-439, 63 Stat. 1058 (7 U.S.C. 1431); sec. 402, Pub. L. 91-665, 68 Stat. 843 (22 U.S.C. 1922); sec. 210, Pub. L. 84-540, 70 Stat. 202 (7 U.S.C. 1859); sec. 9, Pub. L. 85-931, 72 Stat. 1792 (7 U.S.C. 1431b); Pub. L. 86-758, 74 Stat. 899 (7 U.S.C. 1431 note); sec. 709, Pub. L. 89-321, 79 Stat. 1212 (7 U.S.C. 1446a-1); sec. 3, Pub. L. 90-302, 82 Stat. 117 (42 U.S.C. 1761); secs. 409, 410, Pub. L. 93-288, 88 Stat. 157 (42 U.S.C. 5179, 5189); sec. 2, Pub. L. 93-326, 88 Stat. 266 (42 U.S.C. 1762a); sec. 18, Pub. L. 94-105, 89 Stat. 522 (42 U.S.C. 1766); sec. 1304(a), Pub. L. 95-113, 91 Stat. 980 (7 U.S.C. 612 note); sec. 311, Pub. L. 95-478, 92 Stat. 1533 (42 U.S.C. 3030a); sec. 10, Pub. L. 95-627, 92 Stat. 3623 (42 U.S.C. 1760); Pub. L. 98-8, 97 Stat. 35 (7 U.S.C. 612c note); (5 U.S.C. 301).
48. Food Distribution Program Commodities on Indian Reservations.	The Food Stamp Act of 1977, as amended; Section 4(b), 7 U.S.C. 2013(b).
49. National School Lunch Program.....	National School Lunch Act, as amended; 42 U.S.C. 1751-1760.
50. Special Milk Program for Children (School Milk Program).	Child Nutrition Act of 1966, Sec. 3, as amended; 42 U.S.C. 1772.
51. School Breakfast Program.....	Child Nutrition Act of 1966, Sec. 4, as amended; 42 U.S.C. 1773.
52. Summer Food Service Program for Children.....	National School Lunch Act, Sec. 13, as amended; 42 U.S.C. 1761.
53. Child Care Food Program.....	National School Lunch Act, Sec. 17, as amended; 42 U.S.C. 1766.
54. Nutrition Education and Training Program.....	Child Nutrition Act of 1966, Sec. 19, 42 U.S.C. 1788.
55. Special Supplemental Food Program for Women, Infants and Children.	Child Nutrition Act of 1966, Sec. 17, 42 U.S.C. 1786.
56. Commodity Supplemental Food Program.....	Agriculture and Consumer Protection Act of 1973, as amended; 7 U.S.C. 612c note.
57. Temporary Emergency Food Assistance Program.	Temporary Emergency Food Assistance Act of 1983, as amended; 7 U.S.C. 612c note.
58. State Administrative Expenses for Child Nutrition.	Child Nutrition Act of 1966, Sec. 7, as amended; 42 U.S.C. 1776.
59. Nutrition Assistance Program for the Commonwealth of the North Mariana Islands. (This is the Block Grant spin-off of the Food Stamp Program for CNMI).	Trust Territory of the Pacific Island, 48 U.S.C. 1681 note.
<b>Administered by Forest Service</b>	
60. Permits for use of National Forests and National Grasslands by other than individuals at a nominal or no charge.	Act of June 4, 1897, as amended, 16 U.S.C. 551; Sec. 501 of the Federal Land Policy Management Act of 1976, 43 U.S.C. 1761; Term Permit Act of March 4, 1915, as amended, 16 U.S.C. 4971, Secs. 3 and 4 of the American Antiquities Act of June 8, 1906, 16 U.S.C. 432; Sec. 32 of the Bankhead-Jones Farm Tenant Act, as amended, 7 U.S.C. 1011.
61. Youth Conservation Corps.....	Act of August 13, 1970, as amended, 16 U.S.C. 1701-1706. Note: This is a Federally financed and conducted program on National Forest land providing summer employment to teen-age youth doing conservation work while learning about their natural environment and heritage. Recruitment of recipient youth is without regard to economic, social or racial classification. Policy requires that random selection from the qualified applicant pool be made in a public forum.

Program	Authority
62. Job Corps.....	29 U.S.C. 1691-1701. Note: This is a Federally financed and conducted program providing education and skills training to young men and women. The U.S. Department of Labor is entirely responsible for recruiting of recipient youth.
63. Permits for disposal of common varieties of mineral material from lands under the Forest Service jurisdiction for use by other individuals at a nominal or no charge.	Secs. 1-4 of the Act of July 31, 1947, as amended, 30 U.S.C. 601-603, 611.
64. Use of Federal land for airports.....	Airport and Airway Improvement Act of 1982, as amended, 49 U.S.C. 2202, 2215. National Forest lands are exempt, Sec. 2215(c).
65. Conveyance of land to States or political subdivisions for widening highways, streets and alleys.	Act of October 13, 1964, 78 Stat. 1089. Forest Road and Trail Act, codified at 16 U.S.C. 532-538.
66. Payment of 25 percent of National Forest receipts to States for schools and roads.	Act of May 23, 1908, as amended, 16 U.S.C. 500.
67. Payment to Minnesota from National Forest receipts of a sum based on a formula.	Sec. 5 of the Act of June 22, 1948, as amended, 16 U.S.C. 577 g-l.
68. Payment of 25 percent of net revenues from Title III, Bankhead-Jones Farm Tenant Act lands to Counties for school and road purposes.	Sec. 33 of the Bankhead-Jones Farm Tenant Act, as amended, 7 U.S.C. 1012.
69. Cooperative action to protect, develop, manage and utilize forest resources on State and private lands.	Cooperative Forestry Assistance Act of 1976, 16 U.S.C. 2101-2111.
70. Advance of funds for cooperative research.....	Sec. 20 of the Granger-Thye Act of April 24, 1950, 16 U.S.C. 581-1.
71. Grants for support of scientific research.....	Forest and Rangeland Renewable Resources Planning Act of 1974, as amended, 16 U.S.C. 1600 et seq.
72. Research Cooperation.....	Forest and Rangeland Renewable Resources Research Planning Act of 1974, as amended, 16 U.S.C. Older American Act of 1965, as amended, 42 U.S.C. 3056.
73. Grants to Maine, Vermont and New Hampshire for the purpose of assisting economically disadvantaged citizens over 55 years of age.	
74. Senior Community Service Employment, develop, manage and utilize forest resources on State and private lands.	Older American Act of 1965, as amended, 42 U.S.C. 3056.
75. Cooperative Law Enforcement.....	16 U.S.C. 551a and 553.
76. Forest Utilization and Marketing.....	Cooperative Forestry Assistance Act of 1978, Pub. L. 95-313, 16 U.S.C. 1606, 2101-2111.
77. Fire prevention and suppression.....	Cooperative Forestry Assistance Act of 1978, Pub. L. 95-313, Sec. 7, 16 U.S.C. Sec. 2106.
78. Assistance to States for tree planting.....	Cooperative Forestry Assistance Act of 1978, Pub. L. 95-313, Secs. 3, 6, 16 U.S.C. 2102, 2105.
79. Technical assistance forest management.....	Cooperative Forestry Assistance Act of 1978, Pub. L. 95-313, Sec. 8, 16 U.S.C. 2107.
80. Extramural Research (Cooperative Agreements and Grants).	Range Renewable Resources Act of 1978; Rangeland and Latest Renewable Resources Research Act; 16 U.S.C. 1641-1647.
<b>Administered by Food Safety and Inspection Service</b>	
81. Federal-State Cooperative Agreements and Talmadge-Aiken Agreements.	Federal Meat Inspection Act; 21 U.S.C. 601 et seq. Talmadge-Aiken Act; 7 U.S.C. 450. Poultry Products Inspection Act; 21 U.S.C. 451 et seq.
<b>Administered by Office of International Cooperation and Development</b>	
82. Technical Assistance.....	7 U.S.C. 3291; 22 U.S.C. 2357; 22 U.S.C. 2392.
83. International Training.....	7 U.S.C. 3291; 22 U.S.C. 2357; 22 U.S.C. 2392.
84. Scientific and Technical Exchanges.....	7 U.S.C. 3291.
85. International Research.....	7 U.S.C. 3291.
<b>Administered by Soil Conservation Service</b>	
86. Conservation Technical Assistance to Landusers..	Sec. 1-6 and 17 of the Soil Conservation and Domestic Allotment Act, 16 U.S.C. 590a-590f, 590g.
87. Plant Materials Conservation.....	Soil Conservation Act of 1935, Pub. L. 74-46; 49 Stat. 163, 16 U.S.C. 590(a-f).
88. Technical and financial assistance in Watershed Protection and flood prevention.	Watershed Protection and Flood Protection Act, as amended, 16 U.S.C. 1001-1005, 1007-1008; Flood Control Act, as amended and supplemented; 33 U.S.C. 701; 16 U.S.C. 1606(a) and Sec. 403-405 of the Agriculture Credit Act of 1978; 16 U.S.C. 2203-2205. Flood Prevention: Pub. L. 78-534; 58 Stat. 905; 33 U.S.C. 701(b)(1); Pub. L. 81-516.
89. Technical and financial assistance in Watershed Protection and flood prevention.	Emergency Operation (216); 68 Stat. 184; 33 U.S.C. 701(b)(1). Watershed Operation: Pub. L. 83-566; 68 Stat. 666; 16 U.S.C. 1001 et seq.
90. Soil Survey.....	Sec. 1-6 and 17 of the Soil Conservation and Domestic Allotment Act, as amended, 16 U.S.C. 590a-590f, 590g.
91. Rural Abandoned Mine Program.....	Surface Mining Control and Reclamation Act of 1977, Sec. 406; Pub. L. 95-87, 30 U.S.C. 1236, 91 Stat. 460.
92. Resource Conservation and Development.....	Soil Conservation Act of 1935; Pub. L. 74-46; Bankhead-Jones Farm Tenant Act; Pub. L. 75-210, as amended, Pub. L. 89-796; Pub. L. 87-703; Pub. L. 91-343; Pub. L. 92-419; Pub. L. 97-98; 95 Stat. 1213; 16 U.S.C. 590a-590f, 590g.
93. Great Plains Conservation.....	Soil Conservation and Domestic Allotment Act, Pub. L. 74-46, as amended by the Great Plains Act of August 7, 1956; Pub. L. 84-1021, Pub. L. 86-793 approved September 14, 1980. Pub. L. 91-118 approved November 1, 1969; Pub. L. 96-263 approved June 6, 1980; 16 U.S.C. 590a-590f, 590g.

**Subpart B—Nondiscrimination, Direct USDA Programs and Activities****Appendix to Subpart B—USDA Direct Programs and Activities**

Programs conducted by the U.S. Department of Agriculture which include but are not limited to the following:

Program	Authority
<b>Administered by the Agricultural Marketing Service</b>	
1. Agricultural Fair.. Practice Act.....	7 U.S.C. 2301-2306.
2. Commodity Credit Corporation's Dairy Collection Program.....	Omnibus Budget Reconciliation Act of 1982; Dairy and Tobacco Adjustment Act of 1983 (7 U.S.C. 4501-4513); Food Security Improvements Act of 1986.
3. Commodity Purchases .....	Section 32 (7 U.S.C. 612c); Sec. 6a, 6c and 14 of the National School Lunch Act; Sec. 4(a) of the Agriculture and Consumer Protection Act of 1973; 7 U.S.C. 612(c); Older Americans Act (42 U.S.C. 1751, 1755, 1758 and 1761).
4. Commodity Research and Promotion .....	Agricultural Marketing Act of 1946 (7 U.S.C. 1621 Act); (7 U.S.C. 2101-2119); Egg Research and Consumer Information Act (7 U.S.C. 2701-2718); Export Apple and Pear Act (7 U.S.C. 581-590); Export Grape and Plum Act (7 U.S.C. 591-599); Federal Seed Act (7 U.S.C. 1551-1611); National Wool Act of 1954, as amended; (7 U.S.C. 1781-1787); Plant Variety Protection Act (7 U.S.C. 2321-2331, 2351-2357, 2371-2372, 2401-2404, 2421-2417, 2441-2442, 2461-2463, 2481-2486, 2501-2504, 2531-2532, 2541-2545, 2561-2569, 2581-2583); Floral Research, Education and Consumer Information Act of 1981 (7 U.S.C. 4301-4319); Wheat and Wheat Foods Research and Nutrition Education Act of 1977 (7 U.S.C. 3401-3417); Cotton Research and Promotion Act of 1966, as amended, (7 U.S.C. 2101-2119); Dairy and Tobacco Adjustment Act of 1983 (7 U.S.C. 4501-4513); Agricultural Marketing Act of 1946 (7 U.S.C. 1621-1627); Agricultural Fair Practices Act (7 U.S.C. 2301-2306); Capper Volstead Act (7 U.S.C. 291-292); Potato Research and Promotion Act of 1971 (7 U.S.C. 2611-2627); Beef Promotion and Research Act of 1985; the Pork Promotion Research and Consumer Information Act of 1985.
5. Federal Seed Act Administration.....	Federal Seed Act (7 U.S.C. 1551-1575 and 1591-1611); Agricultural Marketing Act of 1946 (7 U.S.C. 1621-1627).
6. Governmentwide Food Quality Assurance .....	Federal Property and Administrative Services Act of 1949 (63 Stat. 377).
7. Inspection Grading and Standardization.....	Agricultural Marketing Act of 1946 (7 U.S.C. 1621-1627); Cotton Statistics and Estimates Act (7 U.S.C. 471-476); U.S. Cotton Futures Act (7 U.S.C. 15b); U.S. Cotton Standards Act (7 U.S.C. 51-65); Naval Stores Act (7 U.S.C. 91-99); Tobacco Inspection Act (7 U.S.C. 511-511q); Wool Standards Act (7 U.S.C. 415b-d); Egg Products Inspection Act 1970, Pub. L. 91-597; 21 U.S.C. 1031-1056; Omnibus Budget Reconciliation Act of 1981, Pub. L. 97-35; Dairy and Tobacco Adjustment Act of 1983 (7 U.S.C. 4501-4513); Tobacco Statistics of 1929 (7 U.S.C. 501-508); Tobacco Inspection Act of 1983 (7 U.S.C. 511r).
8. Market Assistance and Analysis .....	Agricultural Marketing Act of 1946 (7 U.S.C. 1621-1627); Export Apple and Pear Act of 1933 (7 U.S.C. 581-590); Export Grape and Plum Act of 1960 (7 U.S.C. 591-599); Tobacco Seed and Plant Exportation Act (7 U.S.C. 516-517).
9. Marketing Agreements and Orders .....	Agricultural Marketing Agreement Act of 1937, as amended; 7 U.S.C. 601, 602, 608a-e, 612, 614, 624, 671-674; Dairy and Tobacco Adjustment Act of 1983 (7 U.S.C. 4501-4513).
10. Marketing Research .....	Agricultural Marketing Act of 1946; Food and Agriculture Act of 1977.
11. Market News .....	Cotton Statistics and Estimates Act (7 U.S.C. 471-473, 473b, 475-476; Tobacco Inspection Act of 1935 (7 U.S.C. 511-511a); Agricultural Marketing Act of 1946 (7 U.S.C. 1621-1627); Tobacco Statistics Act (7 U.S.C. 501-508); Naval Stores Act (7 U.S.C. 91-99); U.S. Cotton Futures Act (7 U.S.C. 15b); Peanut Statistics (7 U.S.C. 951-957); Turpentine and Rosin Statistics (7 U.S.C. 2248); Agriculture and Food Act of 1981 (7 U.S.C. 2242A).
12. Perishable Agricultural Commodities Act.....	Perishable Agricultural Commodities Act of 1930, as amended (7 U.S.C. 499a-499s); Produce Agency Act (7 U.S.C. 491-497).
13. Plant Variety Protection .....	U.S. Plant Variety Protection Act of 1970, 84 Stat. 1542, 7 U.S.C. 2321 et seq.
<b>Administered by Animal and Plant Health Inspection Service</b>	
14. Animal and Animal Products (Veterinary Services).....	7 U.S.C. 429, 430, 450, 1622, 1624, 2131-2147, 2149-2155, 3374, 2260, 3801-3812, 15 U.S.C. 1821-1831; 19 U.S.C. 1202, Sch. 1, part 1, item 100.01 and 1306; 21 U.S.C. 102-135; 151-158, 612-614 and 618; 45 U.S.C. 71-74; 46 U.S.C. 3901-3902; 49 U.S.C. 1741; 50 U.S.C. App. 2061 et seq.; Executive Order 11987.
15. Plant and Plant Products. Inspection Programs (Plant Protection and Quarantine).....	7 U.S.C. 147a, 147b, 148, 148a-148f, 149, 150-150g, 150aa-150, 151-164-a, 166, 167, 281-286, 450, 1581-1612, 1651-1656, 2260, 2801-2813; 49 U.S.C. 1741; 50 U.S.C. 2061 et. seq.; 2251 et. seq. 87 Stat. 884; Executive Order 11987.
<b>Administered by the Agricultural Stabilization and Conservation Service</b>	
16. Agricultural Conservation Program .....	The Soil Conservation and Domestic Allotment Act of 1936, Secs. 7 to 15, 16(a), 16(f) and 17, as amended and supplemented (16 U.S.C. 590g-590o, 590p(a), 590(q); secs. 1001-1008 and 1010 of the Agricultural Act of 1970, as added by the Agriculture and Consumer Protection Act of 1973 (16 U.S.C. 1501-1508 and 1510), Sec. 1501 of the Food and Agriculture Act of 1977; Sec. 259 of the Energy Security Act of 1980 (Pub. L. 96-294).
17. Conservation Reserve Program.....	Food Security Act of 1985.
18. Cotton Program.....	Commodity Credit Corporation Charter Act, Pub. L. 80-89; Agricultural Act of 1949, as amended, 7 U.S.C. 1444; Extra Long Staple Cotton Act of 1983, Pub. L. 98-88; Food Security Act of 1985, Pub. L. 99-198.
19. Dairy Indemnity Payment Program .....	Pub. L. 90-484, as amended; the Agricultural Act of 1970, Title II, Sec. 204, 7 U.S.C. 450J-450L, Pub. L. 91-524; Agriculture and Consumer Protection Act of 1973; Pub. L. 93-86; Food and Agriculture Act of 1977; Pub. L. 95-113; Food and Agriculture Act of 1981, Pub. L. 97-98.
20. Dairy Termination Program.....	Agricultural Act of 1949, as amended by the Food Security Act of 1985.
21. Emergency Conservation Program.....	Agricultural Credit Act of 1978, Title IV, Pub. L. 95-334, 16 U.S.C. 2201-2205.
22. Emergency Feed Assistance Program.....	Agricultural Act of 1949, Sec. 407.
23. Farm Facility Loan Program .....	Agricultural Act of 1949, as amended; 12 U.S.C. 1134(c), Pub. L. 81-439; Commodity Credit Corporation Charter Act, as amended; 15 U.S.C. 714 (b) and (c); Food and Agriculture Act of 1977, 15 U.S.C. 714(b). Pub. L. 95-113; Pub. L. 96-234; Agriculture and Food Act of 1981, Pub. L. 97-98.
24. Feed Grain Donation Program.....	Agricultural Act of 1949, Sec. 407.
25. Feed Grain Program.....	Commodity Credit Corporation Charter Act, Pub. L. 80-89; Agricultural Act of 1949, as amended, 7 U.S.C. 1421, Pub. L. 81-439; Federal Crop Insurance Act of 1980; Pub. L. 96-365, Food Security Act of 1985, Pub. L. 99-198.
26. Forestry Incentives Program .....	Cooperative Forestry Assistance Act of 1978; Pub. L. 95-313.
27. Grain Reserve Program .....	Agricultural Act of 1949; 7 U.S.C. 1445; Pub. L. 81-439; Commodity Credit Corporation Charter Act, 15 U.S.C. 714, Pub. L. 80-806; Agriculture and Food Act of 1981, Pub. L. 97-98; Food Security Act of 1985, Pub. L. 99-198.

Program	Authority
28. Herd Preservation Program.....	Agricultural Act of 1949, Sec. 407.
29. Indian Acute Distress Donation Program.....	Agricultural Act of 1949, Sec. 407; Executive Order 11336.
30. Programs which do not operate through producers, associations, cooperatives or other recipients.	Agricultural Adjustment Act of 1938; 7 U.S.C. 1301-1393, Pub. L. 73-430; Commodity Credit Corporation Charter Act, 15 U.S.C. 714, et seq.; Agricultural Act of 1949, as amended; 7 U.S.C. 1421, et seq. Pub. L. 81-439; as amended; Agriculture and Food Act of 1961; Pub. L. 97-98; Dairy and Tobacco Adjustment Act of 1983; Pub. L. 98-180; Agricultural Programs Adjustment Act of 1984; Pub. L. 98-258; Food Security Act of 1985; Pub. L. 99-198.
31. Rice Program.....	Commodity Credit Corporation Charter Act; Pub. L. 80-89; Agricultural Act of 1949, as amended, 7 U.S.C. 1441, Pub. L. 81-439; Food Security Act of 1985, Pub. L. 99-198.
32. Rural Clean Water Program.....	Agricultural, Rural Development and Related Agencies Appropriations Act of 1980, Pub. L. 96-108; 93 Stat. 821, 835 and Pub. L. 98-528; 94 Stat. 3095, 3111.
33. Water Bank Program.....	Water Bank Act; Pub. L. 91-559; Pub. L. 96-182.
34. Wheat Program.....	Commodity Credit Corporation Charter Act; Pub. L. 80-89; Agricultural Act of 1949, as amended, 7 U.S.C. 1445; Pub. L. 81-439; Food Security Act of 1985; Pub. L. 99-198.
35. Wool and Mohair Incentive Payment Program.....	National Wool Act of 1954, as amended; 7 U.S.C. 1781-1787; Pub. L. 83-690; Agriculture and Food Act of 1981; Pub. L. 97-98; Food Security Act of 1985; Pub. L. 99-198.
36. Colorado River Salinity Control Program.....	Sec. 202(c), Pub. L. 93-920, 88 Stat. 271, as amended, (43 U.S.C. 1592).
<b>Administered by the Economic Research Service</b>	
37. Rural Economics Research Division.....	Agricultural Marketing Act of 1946, 7 U.S.C. 1621-1627.
38. International Economics Division.....	Agricultural Marketing Act of 1946, 7 U.S.C. 1621-1627.
39. National Resource Economics Division.....	Agricultural Marketing Act of 1946, 7 U.S.C. 1621-1627.
40. National Economics Division.....	Agricultural Marketing Act of 1946, 7 U.S.C. 1621-1627.
<b>Administered by Federal Crop Insurance Corporation</b>	
41. Crop Insurance.....	Federal Crop Insurance Act, as amended, 7 U.S.C. 1501-1520; Title V of the Agricultural Adjustment Act of 1938; 52 Stat. 31 and Federal Crop Insurance Act of 1980, Pub. L. 96-385 (September 26, 1980), 94 Stat. 1312-1319.
42. Standardization Activities.....	Sec. 203(c) of the Agricultural Marketing Act of 1946, as amended; 7 U.S.C. 1622(c).
43. Inspection Activities.....	Sec. 7 of the United States Grain Standards Act, as amended, 7 U.S.C. 79.
44. Compliance Activities.....	Sec. 203(h) of the Agricultural Marketing Act of 1946, as amended, 7 U.S.C. 1622(h).
45. Research and Development.....	Sec. 203 of the Agricultural Marketing Act of 1946, as amended, 7 U.S.C. 1622.
46. Weighing Activities.....	Sec. 7A of the United States Grain Standards Act, as amended, 7 U.S.C. 79a.
<b>Administered by Farmers Home Administration</b>	
47. Emergency Loans.....	Sec. 321-330 of the Consolidated Farm and Rural Development Act, as amended; 7 U.S.C. 1968.
48. Farm Operating Loans.....	Sec. 311, Title I of the Rural Development Act, as amended, 7 U.S.C. 1941.
49. Farm Ownership Loans.....	Sec. 302 of the Consolidated Farm and Rural Development Act, as amended, 7 U.S.C. 1922.
50. Section 502 Rural Housing Loans.....	Sec. 502, Title V, Housing Act of 1949, as amended, 42 U.S.C. 1471.
51. Rural Housing Loans and Grants (Section 504 repair loan and grant).	Sec. 504, Title V, Housing Act of 1949, as amended, 42 U.S.C. 1471.
52. Soil and Water Loans.....	Sec. 304 of the Consolidated Farm and Rural Development Act, as amended, 7 U.S.C. 1924.
<b>Administered by the Forest Service</b>	
53. Permits for use of National Forests and National Grasslands by other than individuals at a nominal or no charge to any group.	Act of June 4, 1897, as amended, 16 U.S.C. 551; Sec. 501 of the Federal Land Policy Management Act of 1976, 43 U.S.C. 1761; Term Permit Act of March 4, 1915, as amended, 16 U.S.C. 497; Secs. 3 and 4 of the American Antiquities Act of June 8, 1906, 16 U.S.C. 432; Sec. 32 of the Bankhead-Jones Farm Tenant Act, as amended, 7 U.S.C. 1011.
54. Timber granted free or at nominal cost to any group.	Sec. 1 of the Act of June 4, 1897, as amended, 16 U.S.C. 551; Sec. 32 of the Bankhead-Jones Farm Tenant Act, as amended, 7 U.S.C. 1011.
55. Forest seedling production and distribution.....	Cooperative Forestry Assistance Act of 1978, Pub. L. 95-313, 28 U.S.C. 2102.
56. Control of White Pine Blister Rust.....	Cooperative Forestry Assistance Act of 1978, Pub. L. 95-313, 16 U.S.C. Sec. 2104 (insect and disease control, White Pine Blister Rust not specifically mentioned).
57. Protection of Forest Resources from insects, pests and diseases.	Cooperative Forestry Assistance Act of 1978, Pub. L. 95-313, 16 U.S.C. 2104.
58. Job Corps.....	29 U.S.C. 1691-1701. Note: This is a Federally-financed and conducted program providing education and skills training to young men and women. The U.S. Department of Labor is entirely responsible for recruiting of recipient youth.
59. Youth Conservation Corps.....	Act of August 13, 1970, as amended, 16 U.S.C. 1701-1706. Note: This is a Federally financed and conducted program on National Forest land providing summer employment to teen-age youth doing conservation work while learning about their natural environment and heritage. Recruitment of recipient youth is without regard to economic, social or racial classification. Policy requires that random selection from the qualified applicant pool be made in a public forum.
<b>Administered by Food Safety and Inspection Service</b>	
60. Meat and Poultry. Inspection Operations Program.	Federal Meat Inspection Act; Pub. L. 90-201; 21 U.S.C. 601, et seq. Poultry Products Inspection Act; Pub. L. 90-492; 21 U.S.C. 601, et seq. Humane Slaughter Act; Pub. L. 85-765; 7 U.S.C. 1901, et seq. Federal Meat Inspection Act; 21 U.S.C. 601, et seq. Poultry Products Inspection Act; 21 U.S.C. 451, et seq.
<b>Administered by Human Nutrition Information Service</b>	
61. Nutrient Data Research.....	National Agriculture Research Extension and Teaching Policy Act of 1977, Sec. 1428; 7 U.S.C. 3178a.
62. Guidance and Education Research.....	National Agriculture Research Extension and Teaching Policy Act of 1977, Sec. 1428; 7 U.S.C. 3178a.
63. Food Consumption Research.....	National Agriculture Research Extension and Teaching Policy Act of 1977, Sec. 1428; 7 U.S.C. 3178a.
64. Diet Appraisal Research.....	National Agriculture Research Extension and Teaching Policy Act of 1977, Sec. 1428; 7 U.S.C. 3178a.

Program	Authority
<b>Administered by National Agricultural Statistics Service</b>	
65. Crop and Livestock Estimates .....	7 U.S.C. 292, 411a, 411b, 427, 471, 475, 476, 501, 951, 953, 955, 956, 957. Agricultural Marketing Act of 1946; 7 U.S.C. 1621-1627; 7 U.S.C. 2201, 2202, 2248, 3103, 3291, 3311, 3504; 22 U.S.C. 3101; 44 U.S.C. 3501-3511; 50 U.S.C. 2061, et seq. 50 U.S.C. 2251, et seq.
66. Statistical Research .....	Agricultural Marketing Act of 1946; 7 U.S.C. 1621.
<b>Administered by the Office of Transportation</b>	
67. Rural Transportation Development .....	Sec. 201 of the Agricultural Adjustment Act of 1938; 7 U.S.C. 1291; Sec. 203(j) of the Agricultural Marketing Act of 1946, as amended; 7 U.S.C. 1662(j). International Carriage of Perishable Foodstuffs Act, 7 U.S.C. 4401, et seq.
68. Foreign Market Development .....	Sec. 201 of the Agricultural Adjustment Act of 1938; 7 U.S.C. 1291 and Sec. 203(j) of the Agricultural Marketing Act of 1946, as amended; 7 U.S.C. 1661(j). International Carriage of Perishable Foodstuffs Act, 7 U.S.C. 4401, et seq.
69. Economic Analysis .....	Sec. 201 of the Agricultural Adjustment Act of 1938; 7 U.S.C. 1291 and Sec. 203(j) of the Agricultural Marketing Act of 1946, as amended; 7 U.S.C. 1662(j).
70. Facilities Research and Development .....	Sec. 201 of the Agricultural Adjustment Act of 1938, 7 U.S.C. 1291 and Sec. 203(j) of the Agricultural Marketing Act of 1946, as amended; 7 U.S.C. 1662(j). International Carriage of Perishable Foodstuffs Act, 7 U.S.C. 4401, et seq.
<b>Administered by Rural Electrification Administration</b>	
71. Rural Electrification Loans and Loan Guarantees .....	Titles I and II of the Rural Electrification Act of 1936, as amended; 7 U.S.C. 901-916, 931-940 (1982).
72. Rural Telephone, Loans and Loan Guarantees .....	Titles II and III of the Rural Electrification Act of 1936, as amended; 7 U.S.C. 922-924, 931-940 (1982).
73. Rural Telephone, Bank Loans .....	Title IV of the Rural Electrification Act of 1936, as amended; 7 U.S.C. 941-950b (1982).
<b>Administered by Soil Conservation Service</b>	
74. Snow Survey and Water Supply Forecasting .....	Soil Conservation and Domestic Allotment Act, Pub. L. 74-46; 16 U.S.C. 590a-590f, 590g.
75. Inventory and Monitoring .....	Secs. 1-6 and 17 of the Soil Conservation and Domestic Allotment Act, as amended; 16 U.S.C. 590a-590f, 590g, Sec. 502 of the Rural Development Act of 1972, 7 U.S.C. 1010a.
76. River Basin Surveys and Investigations .....	Watershed Protection and Flood Prevention Act; Pub. L. 83-566, as amended, Sec. 6, 16 U.S.C. 1006.

Done this 30th day of August, 1988, in Washington, DC.

Peter C. Myers,

*Acting Secretary of Agriculture.*

[FR Doc. 88-27435 Filed 11-30-88; 8:45 am]

BILLING CODE 3410-94-M

## Agricultural Marketing Service

### 7 CFR Part 920

[FV-88-124]

#### Kiwifruit Grown in California; Final Rule to Relax the Standard Pack Requirement and Define Size Designations for Kiwifruit Packed in Certain Containers

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule relaxes the standard pack requirement for Size 39 and smaller kiwifruit packed in certain containers, adds a size designation definition in conformity with that change, and adds numerical count size definitions and requirements for bags, volume fill, and bulk containers. Relaxing the standard pack requirement to allow a greater size variance for smaller fruit packed in bags, volume fill and bulk containers will reduce handling costs for these packs, which are generally sold at discounted prices. Adding numerical count size designations used in packing and marketing these containers will promote

uniformity in sizing kiwifruit. A number of editorial changes are made to clarify the current kiwifruit handling requirements.

**EFFECTIVE DATE:** December 1, 1988.

#### FOR FURTHER INFORMATION CONTACT:

Todd A. Delello, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone (202) 475-5610.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Marketing Order No. 920 (7 CFR Part 920) regulating the handling of kiwifruit grown in California. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 145 handlers of California kiwifruit subject to regulation under the marketing order, and approximately 1,225 producers in the production area. The Small Business Administration (13 CFR 121.2) has defined small agricultural producers as those having annual gross revenue for the last three years of less than \$500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than \$3,500,000. The majority of handlers and producers of California kiwifruit may be classified as small entities.

The 1987 California kiwifruit harvest totalled 7.8 million trays and tray equivalents, 21 percent larger than the 1986 harvest. For the past ten years, kiwifruit production has increased in California and is expected to increase again in 1988 to a total of 8.7 million trays. Most of the crop is shipped to fresh markets, with only a small volume of fruit utilized by processors. Exports increased 31 percent over last year and are estimated to have accounted for 55 percent of the 1987 production. Domestic shipments are also increasing, with a gain of about 20 percent for the 1987 crop.

The 1987 harvest container breakdown reveals that about 82

percent of the crop was packed in trays with the remainder distributed between bags (9.2 percent), volume fill containers (8.3 percent), and bulk (0.5 percent). The use of bags, volume fill and bulk containers rose in 1987 to 18.0 percent of shipments compared to 10.7 percent in 1986.

The handling requirements for fresh California kiwifruit are specified in 7 CFR 920.302 (53 FR 34035, September 2, 1988). The current requirements specify that kiwifruit shall grade at least 85 percent U.S. No. 2 with not more than 8 percent allowed for defects other than shape causing damage, not more than 4 percent allowed for defects other than shape causing serious damage, and not more than 1 percent allowed for fruit affected by internal breakdown or decay. Kiwifruit also must meet a minimum size of 49 and contain at least 6.5 percent soluble solids at the time of inspection. Containers (except for those directly loaded into a vehicle for export) must be marked with a lot stamp number corresponding to the lot inspection.

Pack requirements are also specified in paragraph (a)(4) of § 920.302. Some of these requirements apply to all containers of kiwifruit while others apply only to kiwifruit packed in trays. This rule segregates the current pack requirements by the types of containers to which they apply, and makes a number of editorial changes for clarity.

This rule also revises the pack requirements by increasing the allowable size variance for Size 39 and smaller kiwifruit packed in bags, volume fill and bulk containers from  $\frac{1}{4}$ -inch to  $\frac{3}{8}$ -inch in diameter. A definition of Size 30 has also been inserted into the handling regulation. These two changes were unanimously recommended by the Kiwifruit Administrative Committee on July 12, 1988.

Finally, this rule adds numerical count size definitions that are used by the industry in packing and marketing kiwifruit in containers other than trays. The maximum number of fruit per eight-pound sample is specified in the rule.

The current regulation requires all kiwifruit to be "fairly uniform in size", as defined in the U.S. Standards for Grades of Kiwifruit. Such uniformity is in terms of an allowable variance in diameter among the individual pieces of fruit in a given container. Larger size fruit (Size 30 and larger) may not vary by more than  $\frac{1}{2}$ -inch in diameter; intermediate size fruit (Sizes 31 to 38) may not vary by more than  $\frac{3}{8}$ -inch in diameter; and smaller size fruit (Size 39 and smaller) may not vary by more than  $\frac{1}{4}$ -inch in diameter.

Kiwifruit packed in trays will continue to be required to be "fairly uniform in size". In the interest of clarity, however, the definition of this term has been moved from paragraph (a)(4) to paragraph (b) of the handling regulation (§ 920.302).

For kiwifruit packed in containers other than trays, a modification of the "fairly uniform in size" requirement has been made. These other containers include bags, volume fill and bulk containers, which are used primarily for lower quality and smaller sized fruit. Therefore, such packs generally sell at discounted prices. The committee believes that the cost of precise sorting required by the current  $\frac{1}{4}$ -inch variance for the smallest sizes of kiwifruit is too high in relation to the returns received. Therefore, the allowable variance for these sizes is increased to  $\frac{3}{8}$ -inch in diameter to reduce packing costs and increase the number of packs available to consumers. This action should facilitate the handling of small kiwifruit, and the additional  $\frac{1}{8}$ -inch in size variation permitted is not expected to adversely affect consumer demand.

Since this requirement differs from the "fairly uniform in size" requirement, that term will not be used to specify the allowable size variance for kiwifruit packed in containers other than trays. Instead, the modified specification is fully set forth in § 920.302.

The pack requirements specify that all kiwifruit must be (1) packed in boxes, flats, lugs, cartons or any other containers, and (2) arranged according to approved and recognized methods. This rule deletes these two requirements from the handling regulation. The first is unnecessary because it only states that kiwifruit may be packed in any type of container and does not place any restrictions on the types of containers that may be used in handling kiwifruit. The second is likewise unnecessary because no methods of arranging kiwifruit have been "approved and recognized." Accordingly, this requirement is deleted.

As previously indicated, the majority of California kiwifruit is packed in trays which have cell compartments to hold individual pieces of fruit. The size of the fruit packed in these containers is denoted by count, i.e., the number of pieces of fruit packed in the tray. There are currently 19 sizes packed in trays, ranging from Size 49 (the smallest size permitted to be shipped) to Size 20. The five most prevalent sizes are 30, 33, 36, 39 and 42 which in 1987-88 accounted for almost 88 percent of the trays packed. These types of containers are required to be marked with a numerical count to designate size, and the number

of fruit in the tray must conform to the marked count.

Kiwifruit is also packed in bags, volume fill and bulk containers, which do not have cell compartments. These containers are currently exempt from the requirement that containers be marked with a numerical count to designate size. While not required, the majority of these containers are marked with a size designation, since size is an important factor in marketing kiwifruit.

The numerical size designations used for trays are not directly applicable to bags and other volume fill containers, however. To provide a uniform basis for sizing fruit packed in these containers, the numerical counts used in tray packs have been translated by the committee into equivalent weight counts that can be applied to fruit in other containers. For example, fruit from 30-count trays were assembled into 8-pound samples. The average number of fruit it took to form an 8-pound sample (e.g., 35 pieces of fruit for 30-count trays) then became the criteria to determine the size of the fruit in containers other than trays.

It has been the practice of the committee to annually prepare a Size Designation Chart defining the most commonly packed sizes of kiwifruit in terms of the maximum number of fruit per 8-pound sample. If bags, volume fill or bulk containers are marked to denote size, the Size Designation Chart is used by the Federal-State Inspection Service to verify that the contents of the containers conform to the marked size designation. Since this chart is used in such a way, it is appropriate that it be set forth in § 920.302. Therefore, this rule inserts the Size Designation Chart utilized during the 1986-87 and 1987-88 seasons into the handling regulation. While bags, volume fill, or bulk containers continue to be exempt from the requirement that they be marked with a numerical count, if they are so marked their contents have to conform to these defined size designations. This action should promote consistency in the sizing of kiwifruit packed in all containers.

The only size designation that was defined in the handling regulation for other than tray-packed fruit was Size 49, since it is the minimum size permitted to be shipped. This rule moves the definition of Size 49 from paragraph (a)(2) to paragraph (b) of § 920.302 for consistency.

Since this rule sets an allowable size variance for kiwifruit packed in bags, volume fill and bulk containers of  $\frac{1}{2}$ -inch in diameter for Size 30 and larger and  $\frac{3}{8}$ -inch in diameter for all other sizes, a definition of Size 30 is also

incorporated in paragraph (b) of the regulation, again in the interest of consistency. Size 30 is defined to mean that an 8-pound sample representative of the size in a container contains not more than 35 pieces of kiwifruit.

Finally, the definition of "diameter" that appeared in paragraph (a)(4) has been moved to paragraph (b) of § 920.302. This change also promotes consistency in the regulation.

Based on the above, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

Notice of this action was published in the *Federal Register* on September 29, 1988 (53 FR 38009) allowing interested persons until October 14, 1988 to file written comments. No comments were received.

After consideration of the information and recommendation submitted by the committee, and other available information, it is hereby found that the rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

It is hereby further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the *Federal Register* (5 U.S.C. 533) in that the shipping season for California kiwifruit has already begun, and it is important that the change resulting from this rulemaking be in effect as soon as possible to be of maximum benefit to producers and handlers. Furthermore, producers and handlers of kiwifruit in the production area are already aware of the changes, which relax current handling requirements, and no comments were received when notice of this action was given.

#### List of Subjects in 7 CFR Part 920

Marketing agreements and orders, Kiwifruit, California.

For the reasons set forth in the preamble, 7 CFR Part 920 is amended as follows:

#### PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 920 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 920.302 is amended by revising paragraphs (a)(2), (a)(4) and (b) to read as follows:

Note: This regulation will appear in the Code of Federal Regulations.

#### § 920.302 Grade, size, pack and container regulations.

\* \* \*

(a) \* \* \*

(2) *Size Requirements.* Such kiwifruit shall be at least a minimum Size 49.

\* \* \*

(4) *Pack Requirements.* (i) All containers of Kiwifruit shall be well filled. Contents shall be tightly packed but not excessively or unnecessarily bruised by overfilling or oversizing. Fruit in the shown face of the container shall be reasonably representative in size and quality of the contents.

(ii) Kiwifruit packed in containers with cell compartments, cardboard fillers or molded trays shall be of proper size for the cells, fillers or molds in which they are packed. Such fruit shall be fairly uniform in size. When packed in closed containers the size shall be indicated by marking the container with the numerical count, and the contents shall conform to the marked count.

(iii) Kiwifruit packed in bags, volume fill or bulk containers may not vary more than 1/2-inch (12.7 mm) in diameter if Size 30 or larger and not more than 3/8-inch (9.5 mm) in diameter if smaller than Size 30. When such containers are marked with a numerical count size designation, the numerical count size designation shall be one of those shown in Column 1 of the following table and the number of fruit per 8-pound sample shall not exceed the corresponding number shown in Column 2 of the table:

Column 1, numerical count size designation	Column 2, maximum number of fruit per 8-pound sample
25.....	30
27/28.....	31
30.....	35
33.....	37
36.....	43
39.....	50
42.....	55
45/46.....	62
49.....	64

(iv) Not more than 10 percent, by count, of the containers in any lot and not more than 5 percent, by count, of kiwifruit in any container may fail to meet the requirements of this paragraph.

\* \* \*

(b) *Definitions.* (1) The terms "U.S. No. 2", "fairly uniform in size" and "diameter" mean the same as defined in the United States Standards for Grades of Kiwifruit (7 CFR 51.2335 through 51.2340).

(2) "Size 49" means that an 8-pound sample representative of the size in a

package or container contains not more than 64 pieces of kiwifruit.

(3) "Size 30" means that an 8-pound sample representative of the size in a package or container contains not more than 35 pieces of kiwifruit.

\* \* \*

Dated: November 25, 1988.

Robert C. Keeney,  
Deputy Director, Fruit and Vegetable  
Division.

[FR Doc. 88-27636 Filed 11-30-88; 8:45 am]

BILLING CODE 3410-02-M

#### 7 CFR Parts 932 and 944

[Docket No. FV-88-119]

#### Olives Grown in California and Imported Olives; Establishment of Grade and Size Requirements for Limited Use Styles of California Processed Olives for the 1988-89 Season, and Conforming Changes in the Olive Import Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

**SUMMARY:** The Department is adopting as a final rule the provisions of an interim final rule which established grade and size requirements for California processed olives used in the production of limited use styles of olives such as wedges, halves, slices, or segments and established similar requirements in the olive import regulation to bring that regulation into conformity with the domestic requirements. The grade and size requirements are the same as implemented last season. Olives used in limited use styles are too small to be desirable for use as whole or pitted canned olives because their flesh-to-pit ratio is too low. However, they are satisfactory for use in the production of products where the form of the olive is changed. Their use in such products over the years has helped the California olive industry meet the increasing market needs of the food service industry. The requirements for domestic olives were recommended by the California Olive Committee, which works with the Department in administering the marketing order program for olives grown in California. The establishment of such requirements for imported olives is required pursuant to section 8e of the Agricultural Marketing Agreement Act of 1937.

**EFFECTIVE DATE:** December 1, 1988.

**FOR FURTHER INFORMATION CONTACT:** George J. Kelhart, Marketing Order

Administration Branch, F&V Division, AMS, USDA, P.O. Box 96458, Room 2525-S, Washington, DC 20090-6458; telephone 202-475-3919.

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Order No. 932 (7 CFR Part 932), as amended (the order), regulating the handling of olives grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are seven handlers of California olives subject to regulation under the order and approximately 1,400 producers in California. Approximately 25 importers of olives are subject to the olive import regulation. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than \$500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than \$3,500,000. Most but not all of the olive producers and importers may be classified as small entities. None of the olive handlers may be classified as small entities.

Nearly all of the olives grown in the United States are produced in California. The growing areas are scattered throughout California with most of the commercial production coming from inland valleys. About 75 percent of the production comes from the San Joaquin Valley and 25 percent from the Sacramento Valley.

Olive production has fluctuated from a low of 24,200 tons in the 1972-73 crop year to a high of 146,500 tons in the 1982-83 crop year. Last year's production totalled about 64,000 tons.

The various varieties of olives produced in California have alternate bearing tendencies with high production one year and low the next. The industry expects the 1988-89 crop to be about 85,000 tons.

The primary use of California olives is for canned ripe olives which are eaten out of hand as hors d'oeuvres or used as an ingredient in cooking. The canned ripe olive market is essentially a domestic market. Very few California olives are exported.

This action allows handlers to market more olives than would be permitted in the absence of this relaxation in size requirements. This additional opportunity is provided to maximize the use of the California olive supply, facilitate market expansion, and benefit both growers and handlers.

The interim rule was issued August 3, 1988, and published in the *Federal Register* on August 30, 1988 (53 FR 33100). That rule invited interested persons to submit written comments through September 29, 1988. One comment was received strongly favoring the grade and size requirements established by the interim final rule.

The interim rule modified § 932.153 of Subpart-Rules and Regulations (7 CFR 932.108-932.161). The modification established grade and size regulations for 1988-89 crop limited use size olives. The modification was issued pursuant to paragraph (a)(3) of § 932.52 of the order. That rule also made necessary conforming changes in the olive import regulation (Olive Regulation 1; 7 CFR 944.401). The import regulation is issued pursuant to section 8e of the Act. Section 8e provides that whenever grade, size, quality, or maturity provisions are in effect for specified commodities, including olives, under a marketing order, the same or comparable requirements must be imposed on the imports.

Paragraph (a)(3) of § 932.52 of the marketing order provides that processed olives smaller than the sizes prescribed for whole and pitted styles may be used for limited uses if recommended by the committee and approved by the Secretary. The sizes are specified in terms of minimum weights for individual olives in various size categories. The section further provides for the establishment of size tolerances.

To allow handlers to take advantage of the strong market for halved, segmented, sliced, and chopped canned ripe olives, the committee recommended that grade and size requirements again be established for limited use olives for the 1988-89 crop year (August 1-July 31). The grade requirements are the same as those applied during the 1987-88 crop

year, as are the sizes and the size tolerances. Permitting handlers to use small olives in limited use style canned olives will have a positive impact on industry returns. In the absence of this action, the undersized fruit would have to be used for non-canning uses, like oil, for which returns are lower. The requirements hereinafter set forth in § 932.153 are the same as those contained in the interim rule.

Paragraph (b)(12) of § 944.401 of the olive import regulation allows imported bulk olives which do not meet the minimum size requirements for canned whole and pitted ripe olives to be used for limited use styles if they meet specified size requirements. Continuation of the limited use authorization for California olives by this final rule requires that similar changes be made in paragraph (b)(12) of § 944.401 to keep the import regulation in conformity with the applicable domestic requirements. These conforming changes will benefit importers because they will be able to import small-sized olives for limited use during the 1988-89 season ending July 31, 1989.

Based on the above, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other available information, it is determined that the provisions as hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the *Federal Register* because: (1) This action leaves in effect requirements currently being applied to California and imported olives under an interim rule; (2) the olive import requirements are mandatory under section 8e of the Act; (3) this action relieves restrictions on handlers and importers; (4) the interim final rule provided a 30 day period for comments, one comment was received strongly favoring this action; and (5) no useful purpose would be served by delaying the effective date of this action until 30 days after publication.

#### List of Subjects

##### 7 CFR Part 932

Marketing agreements and orders, Olives, California.

**7 CFR Part 944**

Food grades and standards, Fruits, Import regulations.

For the reasons set forth in the preamble, 7 CFR Parts 932 and 944 are amended as follows.

**PART 932—OLIVES GROWN IN CALIFORNIA****PART 944—FRUITS; IMPORT REGULATIONS**

1. The authority citations for 7 CFR Parts 932 and 944 continue to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Accordingly, the interim rule revising § 932.153, and amending § 944.401(b), which was published at 53 FR 33100 on September 29, 1988, is adopted as a final rule with no changes.

Note: These sections will appear in the Code of Federal Regulations.

Dated: November 25, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88-27637 Filed 11-30-88; 8:45 am]

BILLING CODE 3410-01-M

**7 CFR Part 1002**

[Docket No. A0-71-A76; DA-88-107]

**Milk in the New York-New Jersey Marketing Area; Order Amending Order**

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

**SUMMARY:** This action increases the maximum allowable rate of payment for expense of administration from four cents to five cents per hundredweight of milk handled under the New York-New Jersey Federal milk order. The higher maximum allowable rate of payment is necessary to offset the increased costs of administering the order that have occurred since the rate was last adjusted in September 1969.

The action is based on a public hearing held in Syracuse, New York, on June 6, 1988, to consider an industry proposal to amend the order. The hearing was requested by three dairy farmer cooperatives.

More than the required percentage of producers in the market approved the issuance of the amended order.

**EFFECTIVE DATE:** December 1, 1988.

**FOR FURTHER INFORMATION CONTACT:** Maurice M. Martin, Marketing

Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-7311.

**SUPPLEMENTARY INFORMATION:** Prior documents in this proceeding:

*Notice of Hearing:* Issued May 19, 1988; published May 25, 1988 (53 FR 18844).

*Recommended Decision:* Issued August 23, 1988; published August 29, 1988 (53 FR 32911).

*Final Decision:* Issued September 27, 1988; published October 3, 1988 (53 FR 38727).

**Findings and Determinations**

The findings and determinations hereinafter set forth supplement those that were made when the New York-New Jersey order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) Findings upon the basis of the hearing record. Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the New York-New Jersey marketing area.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area; and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held; and

(4) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, five cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk specified in § 1002.90.

(b) Additional findings. It is necessary in the public interest to make this order amending the order effective not later than December 1, 1988. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing area.

The provisions of this order are known to handlers. The recommended decision of the Deputy Administrator, Marketing Programs, was issued August 23, 1988 (53 FR 32911), and the decision of the Assistant Secretary containing the amendment provision of this order was issued September 27, 1988 (53 FR 38727). The change effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the order effective December 1, 1988, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the *Federal Register*. (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551-559.)

(c) Determinations. It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending the order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order; and

(3) The issuance of the order amending the order is approved or favored by at least two-thirds of the producers who participated in a referendum and who during the determined representative period were engaged in the production of milk for sale in the marketing area.

**List of Subjects in 7 CFR Part 1002**

Milk marketing orders, Milk, Dairy products.

**Order Relative to Handling**

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the New York-New Jersey marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended, as follows:

**PART 1002—MILK IN THE NEW YORK-NEW JERSEY MARKETING AREA**

1. The authority citation for 7 CFR Part 1002 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 1002.90, is amended by revising the first sentence to read as follows:

**§ 1002.90 Payment by handlers.**

To share on a pro rata basis the expense of administration of this part, each handler shall, on or before the date specified for making payment to the producer-settlement fund pursuant to § 1002.85, pay to the market administrator a sum not exceeding five cents per hundredweight on the total quantity of pool milk received from dairy farmers at plants or from farms in a unit operated by such handler, directly or at the instance of a cooperative association of producers and on the quantity for which payment is made pursuant to § 1002.70(d)(2), and exact amount to be determined by the market administrator subject to review by the Secretary. \* \* \*

Signed at Washington, DC, on November 25, 1988.

Kenneth A. Gilles,  
Acting Secretary.

[FR Doc. 88-27727 11-30-88; 8:45 am]

BILLING CODE 3410-02-M

**7 CFR Parts 1007 and 1098**

[Docket Nos. AO-184-A52 and AO-366-A29; DA-88-104]

**Milk in the Nashville and Georgia Marketing Areas; Order Amending Orders**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This action amends the pooling provisions of the Nashville, Tennessee, and Georgia milk orders. A pool distributing plant physically located in the Nashville, Tennessee, marketing area would be regulated under that order irrespective of the market in which the plant has most of its

fluid milk product distribution. Another change in the Nashville order establishes a plus location adjustment of 8.5 cents per hundredweight for milk received at plants located in 18 Tennessee counties south of Nashville. The Georgia order is amended to accommodate the pooling changes in the Nashville order. The amendments are based on the record of a public hearing held November 3, 1987, at Nashville, Tennessee. More than two-thirds of the producers participating in a referendum have approved the amended Nashville order. Likewise, more than two-thirds of the producers pooled under the Georgia order have approved the amended Georgia order.

**EFFECTIVE DATE:** December 1, 1988.

**FOR FURTHER INFORMATION CONTACT:** Robert F. Groene, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-2089.

**SUPPLEMENTARY INFORMATION:** Prior documents in this proceeding:

*Notice of Hearing:* Issued October 16, 1987; published October 21, 1987 (52 FR 39232).

*Recommended Decision:* Issued July 21, 1988; published July 26, 1988 (53 FR 27993).

*Final Decision:* Issued September 27, 1988; published October 3, 1988 (53 FR 38730).

**Findings and Determinations**

The findings and determinations hereinafter set forth supplement those that were made when the Nashville, Tennessee, and Georgia orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) Findings upon the basis of the hearing record. Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Nashville, Tennessee, and Georgia marketing areas.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing areas; and the minimum prices specified in the orders as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said orders as hereby amended regulate the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, marketing agreements upon which a hearing has been held.

(b) Additional findings. It is necessary in the public interest to make this order amending the orders effective not later than December 1, 1988. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing areas.

The provisions of this order are known to handlers. The recommended decision of the Administrator was issued July 21, 1988 (53 FR 27993), and the decision of the Assistant Secretary containing all amendment provisions of this order was issued September 27, 1988 (53 FR 38730). The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the orders effective December 1, 1988, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the Federal Register. (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551-559).

(c) Determinations. It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing areas, to sign proposed marketing agreements, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending the orders is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the orders;

(3) The issuance of the order amending the Nashville, Tennessee, order is approved or favored by at least two-thirds of the producers who

participated in a referendum and who during the determined representative period were engaged in the production of milk for sale in the marketing area; and

(4) The issuance of the order amending the Georgia order is approved or favored by at least two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area.

#### List of Subjects in 7 CFR Parts 1098 and 1007

Milk marketing orders, Milk, Dairy products.

#### Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the Nashville, Tennessee, and Georgia marketing areas shall be in conformity to and in compliance with the terms and conditions of the aforesaid orders, as amended, and as hereby further amended, as follows:

1. The authority citation for 7 CFR Parts 1098 and 1007 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

#### PART 1098—MILK IN THE NASHVILLE, TENNESSEE, MARKETING AREA

2. In § 1098.7, paragraph (d)(2) is revised to read as follows:

##### § 1098.7 Pool plant.

\* \* \*

(d) \* \* \*

(2) A distributing plant qualified pursuant to paragraph (a) of this section which meets the requirements of a fully regulated plant pursuant to the provisions of another order issued pursuant to the Act and from which a greater quantity of fluid milk products, except filled milk, is disposed of during the month from such plant as route disposition in the marketing area regulated by the other order than as route disposition in the Nashville, Tennessee, marketing area, except:

(i) That such distributing plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of its route disposition is made in such other marketing area, unless the other order requires regulation of the plant without regard to its qualifying as a pool plant under this order;

(ii) On the basis of a written application made either by the plant operator or by the cooperative association supplying milk to such operator's plant, at least 15 days prior to the date for which a determination of the Secretary is to be effective, the Secretary may determine that the route disposition in the respective marketing areas to be used for purposes of this paragraph shall exclude (for a specified period of time) route disposition made under limited term contracts to governmental bases and institutions; and

(iii) A plant located in the marketing area that qualifies pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order on the basis of route disposition shall be subject to all the provisions of this part so long as this order's Class I price applicable at such plant location is not less than the other order's Class I price applicable at this same location even though the plant may have greater route disposition in the other marketing area than in the Nashville marketing area.

3. In § 1098.52, paragraph (a)(4) is revised, paragraphs (b) and (c) are redesignated as paragraphs (c) and (d), and a new paragraph (b) is added to read as follows:

##### § 1098.52 Plant location adjustment for handlers.

(a) \* \* \*

(4) For such milk that is physically received at plants located east of the Mississippi River and south of the northern boundary of Tennessee, except for the Tennessee counties specified in paragraph (b) of this section or the northern boundary of North Carolina, no adjustment shall be made under this paragraph.

(b) For such milk that is physically received from producers or from a handler described in § 1098.9(c) at plants located in the Tennessee counties of Bedford, Cannon, Coffee, DeKalb, Franklin, Giles, Grundy, Lawrence, Lewis, Lincoln, Marshall, Maury, Moore, Rutherford, Van Buren, Warren, Wayne, and White, the price shall be adjusted by plus 8.5 cents per hundredweight.

\* \* \*

##### § 1098.60 [Amended]

4. In § 1098.60, paragraph (g) is removed.

5. In § 1098.61, paragraph (a)(2) is revised to read as follows:

##### § 1098.61 Computation of uniform price (including weighted average price and uniform prices for base and excess milk).

(a) \* \* \*

(2) Add an amount equal to the total value of the minus adjustments and subtract an amount equal to the total value of the plus adjustments computed pursuant to § 1098.75;

\* \* \*

6. Section 1098.75 is revised to read as follows:

##### § 1098.75 Plant location adjustments for producers and on nonpool milk.

(a) In making payments to producers pursuant to § 1098.73(b), the uniform price and the uniform price for base milk pursuant to § 1098.61 for producer milk received at a plant shall be adjusted at the rates set forth in § 1098.52 (a) and (b) according to the location of the plant; and

(b) The weighted average price applicable to other source milk shall be adjusted at the rates set forth in § 1098.52 (a) and (b) applicable at the location of the nonpool plant from which the milk was received, except that the weighted average price shall not be less than the Class III price.

##### § 1098.90 [Amended]

7. Amend § 1098.90 by removing the last sentence which reads "For the months of March 1985 through July 1985, base milk shall be determined by the producer's base multiplied by the number of days in the month times the percentage of the producer's production pooled pursuant to § 1098.13."

##### § 1098.92 [Amended]

8. Amend § 1098.92 by removing the last sentence which reads "For producer bases to be calculated on or before February 25, 1985, and subject to § 1098.93, the base to be calculated for each producer shall be an amount obtained by dividing the total pounds of his producer milk (as defined under the respective orders) received from the producer by all handlers fully regulated under the terms of the respective orders regulating the handling of milk in the Georgia; Tennessee Valley; Louisville-Lexington-Evansville; Alabama-West Florida; Memphis, Tennessee; Nashville, Tennessee; Fort Smith, Arkansas; and Central Arkansas marketing areas (Parts 1007, 1011, 1046, 1093, 1097, 1098, 1102, and 1108, respectively, of this chapter) during the immediately preceding months of September 1984 through January 1985 by the number of days' production represented by such producer milk or by 153, whichever is more; or by 138 pursuant to the above provisions."

**PART 1007—MILK IN THE GEORGIA MARKETING AREA**

9. In § 1007.7, paragraph (e)(3) is revised and a new paragraph (e)(4) is added to read as follows:

**§ 1007.7 Pool plant.**

\* \* \*

(e) \* \* \*

(3) A plant (except a plant that is a pool plant pursuant to paragraph (d) of this section) that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act, unless such plant is qualified as a pool plant pursuant to paragraphs (a) or (b) of this section and, except as provided in paragraph (e)(4) of this section, a greater volume of fluid milk products, except filled milk, is disposed of from such plant in this marketing area as route disposition and to pool plants pursuant to paragraphs (a) or (d) of this section than is disposed of from such plant in the marketing area regulated pursuant to the other order as route disposition and to plants qualified as fully regulated plants under such other order on the basis of route disposition in its marketing area.

(4) A distributing plant qualified pursuant to paragraph (a) of this section which meets the requirements of a fully regulated plant pursuant to the provisions of another Federal order and from which a greater quantity of Class I milk, except filled milk, is disposed of during the month in the Georgia marketing area as route disposition than as route disposition in the other marketing area, and such other order which fully regulates the plant does not contain provision to exempt the plant from regulation, even though such plant has greater route disposition in the marketing area of the Georgia order.

Signed at Washington, DC, on November 25, 1988.

Kenneth A. Gilles,

*Acting Secretary.*

[FR Doc. 88-27728 Filed 11-30-88; 8:45 am]

BILLING CODE 3410-02-M

**7 CFR Part 1106**

[DA-89-001]

**Milk in the Southwest Plains Marketing Area; Order Suspending Certain Provisions**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Suspension of rules.

**SUMMARY:** This action, for the months of November 1988 through August 1989, suspends certain shipping standards for

supply plants under the Southwest Plains order. The action was requested by Kraft, Inc., Associated Milk Producers, Inc., and Mid-America Dairymen, Inc. The action is necessary to eliminate costly and inefficient movements of milk from supply plants that would have to be made to assure the continued pricing and pooling of milk of producers who have historically supplied the market's fluid milk needs.

**EFFECTIVE DATE:** December 1, 1988.

**FOR FURTHER INFORMATION CONTACT:** John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-2089.

**SUPPLEMENTARY INFORMATION:** Prior document in this proceeding:

Notice of Proposed Suspension: Issued October 31, 1988; published November 4, 1988 (53 FR 44593).

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. Such action will lessen the regulatory impact of the order on certain milk handlers and will tend to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "nonmajor" rule under the criteria contained therein.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and of the order regulating the handling of milk in the Southwest Plains marketing area.

Notice of proposed rulemaking was published in the Federal Register on November 4, 1988 (53 FR 44593) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon. No views in opposition were received.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that for the months of November 1988 through August 1989 the following provisions of

the order do not tend to effectuate the declared policy of the Act:

1. In § 1106.6, the words "during the month".

2. In § 1106.7(b)(1), the words "of February" and the words "until any month of such period in which less than 20 percent of the milk received or diverted as previously specified, is shipped to plants described in paragraph (a) or (e) of this section. A plant not meeting such 20 percent requirement in any month of such February-August period shall be qualified in any remaining month of such period only if transfers and diversions pursuant to paragraph (b)(2) of this section to plants described in paragraph (a) or (e) of this section are not less than 50 percent of receipts or diversions, as previously specified".

**Statement of Consideration**

This action, for November 1988 through August 1989, suspends the shipping standards for supply plants that were previously associated with the market. The order defines a supply plant as a plant from which fluid milk products are transferred or diverted to distributing plants during the month. It further provides that in order to be pooled under the order during the months of September through January, 50 percent of a supply plant's receipts must be shipped to distributing plants each month. Also, a supply plant that was pooled during each of the immediately preceding months of September through January shall continue to be pooled during the following months of February through August if 20 percent of its receipts are shipped to distributing plants. This action will remove all shipping standards for supply plants during the months of November 1988 through August 1989 that were pooled under the order during the immediately preceding September through January period.

The suspension was requested by Kraft, Inc., a handler who operates a supply plant that is pooled under the order. The action is supported by Associated Milk Producers, Inc., and Mid-America Dairymen, Inc., cooperative associations that represent a substantial number of producers who supply the market. These organizations indicate that there are ample supplies of direct-ship milk located near to distributing plants that are available to supply the fluid milk needs of such plants. As a result of production increases, it is unlikely that supplemental shipments of milk from supply plants will be necessary to meet the fluid milk needs of distributing

plants during the months of November 1988 through August 1989. As a result, this suspension action will allow handlers to avoid making costly and inefficient shipments of milk from supply plants that would otherwise have to be made to assure the continued pooling of milk of dairy farmers who have historically supplied the market's fluid milk needs.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that the action will permit milk that has been historically associated with the market to continue to be priced under the order without costly and inefficient shipments of milk from supply plants;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. No comments in opposition were received.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register**.

#### List of Subjects in 7 CFR Part 1106

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, that the following provisions in §§ 1106.6 and 1106.7 of the Southwest Plains order are hereby suspended for the months of November 1988 through August 1989.

#### PART 1106—MILK IN THE SOUTHWEST PLAINS MARKETING AREA

1. The authority citation for 7 CFR Part 1106 continues to read as follows:

**Authority:** Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

##### § 1106.6 [Suspended in part]

2. In § 1106.6, the words "during the month" are suspended.

##### § 1106.7 [Suspended in part]

3. In § 1106.7(b)(1), the words "of February" and the words "until any month of such period in which less than 20 percent of the milk received or diverted as previously specified, is shipped to plants described in paragraph (a) or (e) of this section. A plant not meeting such 20-percent requirement in any month of such

February–August period shall be qualified in any remaining month of such period only if transfers and diversions pursuant to paragraph (b)(2) of this section to plants described in paragraph (a) or (e) of this section are not less than 50 percent of receipts or diversions, as previously specified" are suspended.

Signed at Washington, DC, on November 25, 1988.

**Kenneth A. Gilles**

*Assistant Secretary for Marketing and Inspection Services.*

[FR Doc. 88-27635 Filed 11-30-88; 8:45 am]

BILLING CODE 3410-02-M

#### Animal and Plant Health Inspection Service

##### 9 CFR Part 94

[Docket No. 88-108]

#### Importation of Meat and Animal Products

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the regulations in 9 CFR Part 94 by removing all references to "Deputy Administrator" and replacing them with references to "Administrator." We are also removing all references to "Veterinary Services" and replacing them with references to "Animal and Plant Health Inspection Service." These changes are necessary to clarify that authority under these regulations is held by the Administrator, Animal and Plant Health Inspection Service, and not by the Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

**EFFECTIVE DATE:** December 1, 1988.

**FOR FURTHER INFORMATION CONTACT:** Steven B. Farbman, Assistant Director, Regulatory Coordination, PPD, APHIS, USDA, Room 728, Federal Building, Hyattsville, MD 20782; 301-436-5533.

**SUPPLEMENTARY INFORMATION:** The regulations in 9 CFR Part 94 concern the importation into the United States of certain meat and animal products. Prior to the effective date of this document, these regulations stated that the Deputy Administrator, Veterinary Services, of the Animal and Plant Health Inspection Service, is responsible for various decisions made pursuant to the regulations. However, this is not correct. Authority and responsibility belongs to the Administrator, Animal and Plant Health Inspection Service.

Therefore, to clarify the regulations with respect to the Administrator's authority and responsibility, we are making nonsubstantive changes in the regulations. Among other changes, we are removing all references to "Deputy Administrator" and replacing them with references to "Administrator," and removing references to "Veterinary Services" and replacing them with references to "Animal and Plant Health Inspection Service." We are also adding definitions of "Administrator," "Animal and Plant Health Inspection Service," and "Department." These terms are now used in the regulations. However, none of them are defined. The definitions we are adding are the same definitions we use in other Parts of Title 9, Code of Federal Regulations.

#### Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than \$100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Making the nonsubstantive wording changes described in this document will have no effect on importers, quarantine facility operators, or any other persons outside of the Animal and Plant Health Inspection Service.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

#### Effective Date

Determining the official responsible for decisions made under these animal importation regulations is a matter of internal Agency management. Therefore, neither a general notice of proposed rulemaking nor a 30-day delay in effective date is required under 5 U.S.C.

553. Accordingly, this regulation is effective upon publication.

#### Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

#### Executive Order 12372

These programs/activities under 9 CFR Part 94 are listed in the Catalog of Federal Domestic Assistance under No. 10.025 and are subject to the provisions of Executive Order 12372, which required intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

#### Lists of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock and livestock products, Meat and meat products, Milk, Poultry and poultry products, African swine fever, Exotic Newcastle disease, Foot-and-mouth disease, Fowl pests, Garbage, Hog cholera, Rinderpest, Swine vesicular disease.

Accordingly, we are amending 9 CFR Part 94 as follows:

#### PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), NEWCASTLE DISEASE (AVIAN PNEUMOENCEPHALITIS), AFRICAN SWINE FEVER, AND HOG CHOLERA: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for Part 94 continues to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, and 134f; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 94.0 the definition of "Deputy Administrator" is removed and definitions of "Administrator", "Animal and Plant Health Inspection Service", and "Department" are added, in alphabetical order, to read as follows:

#### § 94.0 Definitions.

**Administrator.** The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

**Animal and Plant Health Inspection Service.** The Animal and Plant Health Inspection Service, of the United States Department of Agriculture (APHIS.)

**Department.** The United States Department of Agriculture (USDA, Department).

\* \* \* \* \*

#### § 94.1 [Amended]

3. In § 94.1, paragraph (c)(2), remove the words "the Veterinary Services unit of".

#### § 94.5 [Amended]

4. In § 94.5(c), remove the words "The Plant Protection and Quarantine Programs and Veterinary Services, Animal and Plant Health Inspection Service," and add the words "APHIS" in their place.

#### § 94.8 [Amended]

5. In § 94.8, introductory paragraph, the word "administrator" is amended to read "Administrator".

#### §§ 94.3, 94.4, 94.6, 94.7, 94.8, 94.9, 94.11, 94.12, 94.14, 94.16 and 94.17 [Amended]

6. In addition to the amendments set forth above, in 9 CFR Part 94 remove the words "Deputy Administrator, Veterinary Services" and add, in their place, the word "Administrator" in the following places:

- (a) Section 94.3;
- (b) Section 94.4; including § 94.4(b)(3), footnote 2;
- (c) Section 94.6; including § 94.6(d)(2), footnote 1; (g)(2)(i), footnote 3; (g)(2)(ii), footnotes 4 and 5;
- (d) Section 94.7;
- (e) Section 94.8;
- (f) Section 94.9;
- (g) Section 94.11;
- (h) Section 94.12; including § 94.12(b)(1)(iii)(B), footnote 1;
- (i) Section 94.14;
- (j) Section 94.16; including § 94.16(b)(2), footnote 1;
- (k) Section 94.17.

#### §§ 94.1, 94.4, 94.8, and 94.17 [Amended]

7. In addition to the amendments set forth above, in 9 CFR Part 94 remove the words "Veterinary Services" and add, in their place, the word "APHIS" in the following places:

- (a) Section 94.1(c)(4);
- (b) Section 94.4(b)(4);
- (c) Section 94.8;
- (d) Section 94.17.

#### §§ 94.4, 94.6, 94.8, 94.9, 94.10, 94.12, 94.16 [Amended]

8. In §§ 94.4, 94.6, 94.8, 94.9, 94.10, 94.12 and 94.16, remove the word "Deputy".

Done at Washington, DC, this 18th day of November 1988.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-27138 Filed 11-30-88; 8:45 am]

BILLING CODE 3410-34-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 21

[Docket No. 25745; Amdt. No. 21-64]

#### Responsibilities of Manufacturers of Parts and Products Produced Under a Production Certificate

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment clarifies the responsibility of a production certificate holder with respect to the manufacture of a replacement or modification part for installation on a type certificated product. The amendment is intended to ensure that such manufacturers are aware of their responsibility to determine that each part produced conforms to its approved design and is in a condition for safe operation.

**DATES:** Effective date of this amendment is January 3, 1989. Comments must be received on or before January 3, 1989.

**FOR FURTHER INFORMATION CONTACT:** Melanie R. Miller, Aircraft Manufacturing Division (AIR-200), Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-8361.

**ADDRESSES:** Comments may be mailed or delivered in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-10), Docket No. 25745, 800 Independence Avenue, SW., Washington, DC 20591. Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Even though this action is in the form of a final rule which involves clarification of an existing rule and was not preceded by notice and public comment procedure, comments are invited on the rule change. Interested persons are invited to comment on any portion of this rule by submitting written data, views, or arguments as they may desire. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulations. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the

regulations. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule. Anyone wishing the FAA to acknowledge receipt of their comments submitted in response to this final rule must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25745." The postcard will be date/time stamped and returned to the commenter. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

#### Background

Section 21.303 of the Federal Aviation Regulations (FAR) specifies that no person may manufacture a replacement or modification part for sale for installation on a type certificated product unless it was produced by an owner or operator for use on his own product, or was produced under a Parts Manufacturer Approval (PMA), a type certificate or production certificate, or a Technical Standard Order (TSO). The requirement that these parts be produced under an FAA-approved quality control system helps ensure that installation of replacement or modification parts on type certificated products does not adversely affect the airworthiness of the product. In addition, with respect to parts produced under a PMA, § 21.303(k) specifically requires that the manufacturer determine that each completed part conforms to the design data and is in a condition for safe operation. With respect to parts produced under a production certificate, however, § 21.165(b) provides that the manufacturer must determine that each completed product conforms to the type design and is in a condition for safe operation.

#### Discussion

The FAA has historically regarded the requirement of a determination of conformity and condition for safe operation as applicable to all parts produced for installation on a type certificated product, including those manufactured under a production certificate, even though the word "parts" does not appear in § 21.165(b). However, it has come to the attention of the FAA that recently there has been some confusion as to the applicability of the requirement to parts produced under a

production certificate. Compliance with this requirement by all parts manufacturers is essential to aviation safety and, therefore, the FAA is amending the rule to clearly establish that a manufacturer under a production certificate is also required to ensure conformity and condition for safe operation of each part.

#### *Good Cause Justification for Making This Amendment Effective Without Prior Public Comment*

Since this amendment merely clarifies an existing standard and imposes no additional burden on any person, I find that notice and public procedures are unnecessary and would not reasonably be expected to result in the receipt of beneficial information. However, interested persons are invited to submit such comments as they may desire regarding this amendment.

#### Conclusion

The adoption of this amendment serves to clarify currently existing responsibilities of manufacturers of parts and products under production certificates. The amendment imposes no additional burden on any party. Therefore, the FAA has determined that this amendment is not a major rule under Executive Order 12291 or a significant rule under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). In addition, it is certified that under the criteria of the Regulatory Flexibility Act, this rule will not have a significant impact, positive or negative, on a substantial number of small entities, and the rule does not warrant preparation of a regulatory evaluation as the overall impact on manufacturers will be minimal.

#### Federalism Determination

The amendment set forth herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The amendment set forth would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which has been construed to preempt state law regulating the same subject. Therefore, in accordance with Executive Order 12612, it is determined that such a regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

#### List of Subjects in 14 CFR Part 21

Air transportation, Aircraft, Aviation safety, Safety.

#### The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends Part 21 of the Federal Aviation Regulations (14 CFR Part 21) as follows:

#### **PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS**

1. The authority citation for Part 21 continues to read as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2); 42 U.S.C. 1857f-10, 4321, *et seq.*, E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. Section 21.165(b) is revised to read as follows:

#### **§ 21.165 Responsibility of holder.**

(b) Determine that each part and each completed product submitted for airworthiness certification or approval conforms to the approved design and is in a condition for safe operation.

Issued in Washington, DC, on November 28, 1988.

T. Allan McArdor,  
Administrator.

[FR Doc. 88-27676 Filed 11-30-88; 8:45 am]  
BILLING CODE 4910-13-M

#### **14 CFR Part 39**

[Docket No. 88-CE-28-AD; Amdt. 39-6087]

#### **Airworthiness Directives; Piper Model PA-46-310P Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new Airworthiness Directive (AD), applicable to Piper Model PA-46-310P airplanes, which modifies the engine cooling system. Incidents have occurred that indicate excessive operating temperatures have resulted in engine damage. The actions of this AD will prevent catastrophic engine failure due to insufficient cooling air.

**DATES:** *Effective Date:* January 3, 1989.

*Compliance:* Required within the next 50 hours time-in-service after the effective date of this AD unless already accomplished.

**ADDRESSES:** Piper Aircraft Corporation Service Bulletin (SB) No. 892, dated August 24, 1988, applicable to this AD

may be obtained from the Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960; Telephone (407) 567-4366. This information also may be examined in the Rules Docket, Federal Aviation Administration, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Jerry Robinette, Aerospace Engineer, Propulsion Branch, ACE-140A, Atlanta Aircraft Certification Office, FAA, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349; Telephone (404) 991-3810.

**SUPPLEMENTARY INFORMATION:**

A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring modification of the engine cooling system on all Piper Model PA-46-310P airplanes was published in the *Federal Register* on September 29, 1988 (53 FR 38023). The proposal resulted from recent tests conducted by Piper on a Model PA-46-310P airplane which confirmed that both oil and cylinder head normal operating temperatures were exceeded due to insufficient air flow through the engine compartment. This condition, if not corrected, can result in catastrophic failure of the engine due to excessive heat. As a result, Piper issued SB No. 892, dated August 24, 1988, specifying a powerplant cooling improvement kit which adds another louver to each nose gear door, modifies the baffle in front of the number six cylinder and moves the cylinder head temperature thermocouple to the number six cylinder. This kit allows for increased cooling air flow thereby reducing engine temperatures so that the limits are not exceeded within normal operation.

Since the condition described herein is likely to exist or develop in other Piper Model PA-46-310P airplanes of the same design, an AD was proposed which would require compliance with Piper SB No. 892 for these airplanes.

Interested persons have been afforded an opportunity to comment on the proposal. Only one commenter responded and his concern was limited to the FAA determination of the related cost to the public. The NPRM stated that the cost of kit, plus \$25 allowance for paint and 6 hours labor allowance will be absorbed by Piper. The commenter stated that this offer is effective for 180 days from August 24, 1988. This comment is correct and this amount will be included in the cost determination. However, it does not result in a change to the overall cost determination. Accordingly, the proposal is adopted without change.

The FAA has determined that this regulation involves 403 airplanes at an approximate one-time cost of \$338 (for the kit \$25 allowance for paint and 6 hours labor allowance to be absorbed by Piper effective for 180 days from August 24, 1988) for each airplane, or a total one-time fleet cost of \$136,214. The cost of complying with this AD will not have significant impact on any small entities owning affected airplanes.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

**PART 39—[AMENDED]**

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. By adding the following new AD:

**Piper:** Applies to Model PA-46-310P (all serial numbers) airplanes certificated in any category.

**Compliance:** Required within the next 50 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent possible catastrophic engine failure accomplish the following:

(a) Modify the engine cooling system in accordance with Piper Service Bulletin 892, dated August 24, 1988.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(c) An equivalent means of compliance with this AD, if used, must be approved by the Manager, Atlanta Aircraft Certification Office, ACE-115A, Federal Aviation Administration, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349.

All persons affected by this directive may obtain copies of the document referred to herein upon request to the Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960, or may examine this document at the FAA, Office of the Assistant Chief Counsel, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on January 3, 1989.

Issued in Kansas City, Missouri, on November 22, 1988.

**Barry D. Clements,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 88-27675 Filed 11-30-88; 8:45 am]

**BILLING CODE 4910-13-M**

**14 CFR Part 97**

[Docket No. 25741; Amdt. No. 1388]

**Standard Instrument Approach Procedures; Miscellaneous Amendments**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

**ADDRESSES:** Availability of matters incorporated by reference in the amendment is as follows:

*For Examination—*

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

*For Purchase—*

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

*By Subscription—*

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

**FOR FURTHER INFORMATION CONTACT:**

Donald K. Funai, Flight Procedures Standards Branch (AFS-230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

**SUPPLEMENTARY INFORMATION:** This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the *Federal Register* expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials.

Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 97**

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC on November 25, 1988.

Robert L. Goodrich,

*Acting Director, Flight Standards Service.*

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.M.T. on the dates specified as follows:

**PART 97—[AMENDED]**

1. The authority citation for Part 97 continues to read as follows:

**Authority:** 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2)).

*Effective February 9, 1989*

Fairfield, IL—Fairfield Muni, NDB RWY 9, Amdt. 2  
 Cambridge, MD—Cambridge—Dorchester, NDB RWY 34, Amdt. 7  
 Gallup, NM—Gallup Municipal, VOR RWY 6, Amdt. 6  
 Gallup, NM—Gallup Municipal, LOC RWY 6, Amdt. 2  
 Babelthup Island, Caroline Is., TT—Babelthup/Koror, NDB RWY 9, Amdt. 2, CANCELLED  
 Babelthup Island, PS—Babelthup/Koror, NDB RWY 9, Orig.  
 Babelthup Island, Caroline Is., TT—Babelthup/Koror, NDB/DME RWY 9, Orig. CANCELLED  
 Winchester, VA—Winchester Regional, LOC RWY 32, Amdt. 1  
 Fort Bridger, WY—Fort Bridger, VOR RWY 22, Amdt. 1

*Effective January 12, 1989*

Haleyville, AL—Posey Field, VOR/DME RWY 18, Amdt. 3  
 Muscle Shoals, AL—Muscle Shoals, VOR RWY 29, Amdt. 26  
 Muscle Shoals, AL—Muscle Shoals, VOR/DME RWY 11, Amdt. 5  
 Muscle Shoals, AL—Muscle Shoals, ILS RWY 29, Amdt. 3  
 Merced, CA—Merced Municipal/Macready Field, ILS RWY 30, Amdt. 10  
 Carrollton, GA—West Georgia Regional, LOC RWY 34, Amdt. 1  
 Fitzgerald, GA—Fitzgerald Muni, LOC RWY 1, Orig.  
 Fitzgerald, GA—Fitzgerald Muni, NDB RWY 01, Amdt. 3  
 Fitzgerald, GA—Fitzgerald Muni, NDB RWY 1, Orig.  
 Nashville, GA—Berrien Co., RADAR 1, Orig.

Carbondale/Murphysboro, IL—Southern Illinois, VOR—A, Amdt. 4  
 Carbondale/Murphysboro, IL—Southern Illinois, NDB RWY 18, Amdt. 11  
 Carbondale/Murphysboro, IL—Southern Illinois, ILS RWY 18, Amdt. 11  
 Dodge City, KS—Dodge City Muni, LOC RWY 14, Orig.  
 Louisville, KY—Bowman Field, VOR RWY 1, Amdt. 2  
 Louisville, KY—Bowman Field, VOR RWY 14, Amdt. 7  
 Louisville, KY—Bowman Field, VOR RWY 19, Amdt. 2  
 Louisville, KY—Bowman Field, VOR RWY 24, Amdt. 2  
 Louisville, KY—Bowman Field, VOR RWY 32, Amdt. 12  
 Louisville, KY—Bowman Field, NDB RWY 32, Amdt. 11  
 Pontiac, MI—Oakland-Pontiac, VOR RWY 9R, Amdt. 23  
 Pontiac, MI—Oakland-Pontiac, VOR RWY 27L, Amdt. 14  
 Pontiac, MI—Oakland-Pontiac, LOC/DME BC RWY 27L, Amdt. 7  
 Pontiac, MI—Oakland-Pontiac, ILS RWY 9R, Amdt. 11  
 Newark, NJ—Newark Intl, VOR/DME RWY 22 L&R, Amdt. 2  
 Newark, NJ—Newark Intl, NDB RWY 4L, Amdt. 9  
 Newark, NJ—Newark Intl, NDB RWY 4R, Amdt. 5  
 Newark, NJ—Newark Intl, NDB RWY 4L, Amdt. 10  
 Newark, NJ—Newark Intl, NDB RWY 4R, Amdt. 6  
 Newark, NJ—Newark Intl, NDB RWY 22L, Amdt. 6  
 Conroe, TX—Montgomery County, RNAV RWY 32, Orig.  
 Corpus Christi, TX—Corpus Christi Intl, VOR or TACAN RWY 17, Amdt. 25  
 Corpus Christi, TX—Corpus Christi Intl, LOC RWY 31, Amdt. 3  
 Corpus Christi, TX—Corpus Christi Intl, ILS RWY 13, Amdt. 24  
 Corpus Christi, TX—Corpus Christi Intl, ILS RWY 35, Amdt. 9

*Effective December 15, 1988*

Dodge City, KS—Dodge City Muni, ILS RWY 14, Orig.  
 Nashville, TN—Nashville International, LDA/DME RWY 2R, Orig.

*Effective November 18, 1988*

Fullerton, CA—Fullerton Muni, LOC RWY 24, Amdt. 3

*Effective November 17, 1988*

Redding, CA—Redding Muni, LOC/DME BC RWY 16, Amdt. 6  
 Dayton, OH—James M. Cox-Dayton Intl, RADAR-1, Amdt. 7

*Effective November 14, 1988*

Jefferson City, MO—Jefferson City Meml, LOC BC RWY 12, Amdt. 3

[FR Doc. 88-27632 Filed 11-30-88; 8:45 am]

BILLING CODE 4910-13-M

## Office of the Secretary

### 14 CFR Part 298

[Docket No. 45584; Amendment No. 298-33]

RIN 2137-AA98

### Aviation Economic Regulations; Exemptions for Air Taxi Operations

**AGENCY:** Research and Special Programs Administration, Office of the Secretary, DOT.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends Part 298 by requiring commuter air carriers providing scheduled passenger service to file Schedule F-1 "Report of Financial Data" of RSPA Form 298-C. This schedule is needed to obtain quarterly financial data (Total Operating Revenues, Total Operating Expenses, Net Profit or (Loss) and Passenger Revenues—Scheduled Service). This information will be used primarily by the Department of Transportation to monitor the continuing fitness of commuter air carriers as required by section 401(r) of the Federal Aviation Act of 1958, as amended. The financial information will also benefit the Department's work in other program areas such as in the administration of the Aviation Trust Fund and Loan Guarantee Programs, in econometric modeling and regulatory cost-benefit analyses which support aviation policy and regulatory decisions, and in the Federal Aviation Administration's planning for its allocation of inspection resources.

**EFFECTIVE DATE:** January 1, 1989.

**FOR FURTHER INFORMATION CONTACT:** Jack M. Calloway or Richard G. Minick, Office of Aviation Information Management, Regulations Division, DAI-10, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-4383 or (202) 366-4389, respectively.

### SUPPLEMENTARY INFORMATION:

#### Background

In a notice of proposed rulemaking (NPRM) published April 19, 1988 (53 FR 12774) the Department of Transportation (hereafter referred to as either DOT or Department) proposed to require commuter air carriers providing scheduled passenger service (commuters) to file four financial data elements. The data elements proposed for collection were (1) Total Operating Revenues, (2) Total Operating Expenses, (3) Net Profit or (Loss) and (4) Passenger Revenues—Scheduled Service. This information would be reported on the

quarterly Schedule F-1 "Report of Financial Data" of Form 298-C *Report of Financial and Operating Statistics for Small Aircraft Operators*. Schedule F-1 is currently being filed by carriers certificated under section 401 of the Federal Aviation Act of 1958, as amended (FAA), whose operations are limited to the United States and performed with only small aircraft (aircraft with 60 seats or less or 18,000 pounds maximum payload capacity or less). This group of carriers is commonly referred to as small certificated air carriers. The proposal would add the new reporting by amending Part 298 (14 CFR Part 298) of the Department's regulations.

The NPRM stated that the four financial data elements were needed by the Department to monitor continuing fitness, to provide input for econometric models, to assist with the administration of aviation trust fund revenue calculations, to perform regulatory analysis and evaluations, to monitor the aircraft guaranteed loan program, and to aid the Federal Aviation Administration (FAA) in the allocation of its inspection resources.

### Comments

Comments were received from two commuters: Metro Airlines, Inc. (Metro) and Wings Airways (Wings); two trade associations: Regional Airline Association (RAA) and the Airline Pilots Association; and one certificated air carrier, Midway Airlines, Inc. (Midway), who filed late. The Airline Pilots Association filed two separate comments—one by the Economics and Financial Office (ALPA—Economics) and one by the Engineering and Safety Department (ALPA—Safety). Two commenters supported the proposed rule with modifications, while the remainder objected to adoption of the proposal. The issues raised by the commenters are discussed below.

### SEC Report in Lieu of 298-C, Schedule F-1

Metro stated that it is a public holding company for five wholly owned commuter subsidiaries. These subsidiaries are Metroflight, Inc.; Metro Express, Inc.; Aviation Associates, Inc.; Metro Express II, Inc.; and Chaparral Airlines, Inc. As a public holding company, Metro stated that it is already subject to the more stringent reporting requirements of the Securities and Exchange Commission (SEC). It objected to filing a set of quarterly financial reports in addition to the reports it files with the SEC. Because its fiscal year ends April 30 rather than December 31,

its accounting quarters do not coincide with the calendar quarters as proposed in the NPRM; therefore, it must file eight quarterly reports a year—four with DOT and four with SEC. To alleviate this additional reporting burden, Metro suggested that DOT exempt publicly held carriers or carriers that are subsidiaries of publicly held carriers from the reporting requirements and accept for DOT purposes the same reports that are filed with SEC. Metro felt that the incongruence in quarters would not have a significant impact on the comparability of data and suggested that DOT accept reporting by fiscal quarters by all publicly held corporations.

The Department cannot accept SEC filings in lieu of Schedule F-1 from either a publicly held holding company or a publicly held company for several reasons. First, the results reported to SEC are the consolidated results of the holding company and individual company results are obscured. In the case of Metro, nothing can be derived from the consolidated results concerning the individual commuters. If DOT were doing a fitness review on one of Metro's commuter subsidiaries, we would not know, for example, whether the subsidiary made a profit or loss, or how much passenger service revenue was generated. Second, in many holding companies, the individual subsidiary's business activities are not related. For instance, one subsidiary could be a commuter, one could be a hotel, and one could be a car rental agency. The consolidated report to SEC would be meaningless concerning the commuter. Third, for SEC reporting, revenue and expense data may be reported in broad categories. For example, all passenger revenue may be reported as passenger revenue without disclosing the source—scheduled or charter service. Looking at a publicly held company, we would not know whether its main source of revenue was scheduled or charter operations. Finally, the reporting periods for SEC are not standard. They are the fiscal reporting periods selected by the respondent. Contrary to Metro's contention, erroneous conclusions can be made from data that are not uniformly reported. For instance, suppose several commuters had a fiscal year that ended October 31 and other commuters' fiscal year ended December 31. The last quarter of the October 31 fiscal year does not include two major traffic producing holidays of Thanksgiving and Christmas, while the last quarter of the calendar year does. An analyst using the last quarter's data

could very well conclude that the last quarter's traffic had declined.

#### *Data Submitted by Wholly-Owned Commuter Subsidiaries*

It was Midway's position that affiliated commuters of certificated air carriers should be excluded from reporting the financial data required by this rule. Midway's wholly-owned subsidiary, Fischer Bros. Aviation d/b/a Midway Commuter (MC), operates as a commuter carrier. Midway contended that because MC's financial data are consolidated with those of Midway and since only allocations are available for MC for some revenue and costs, the data would not be of any use to DOT. In fact, use of the data for financial fitness or other purposes would produce seriously misleading information according to Midway. Midway stated that some revenue and cost allocations made by it are done for internal purposes only, and do not reflect operations of MC as a stand-alone company as they are not arms-length transactions. It further stated that the Department could use the reports filed by it to target carriers for safety inspections. Since Midway did not name the reports, we assume they meant the Form 41 report filed under Part 241 of the Department's regulations (14 CFR Part 241). Further, Midway stated that if affiliated subsidiaries of certificated air carriers are not excluded, then the Department should at least indicate in the final rule its willingness to grant waivers from the reporting requirement.

The Department is not persuaded by Midway's arguments. The Department agrees that a commuter's data when dealing with its parent may not be an arms-length transaction. The nature of the relationship presumes control of the commuter by the certificated carrier, otherwise there would be no affiliation. The parent normally dictates to the subsidiary the policy in such areas as revenue allocations where both are involved, depreciation, tax accounting, and overhead pools. However, if the Department does not feel that the information provided by the commuter is sufficient, it can supplement this information by information requests under Part 204 (14 CFR Part 204) for continuing fitness or under the delegated authority of Part 385 (14 CFR Part 385) for other needs. Finally, the use of Midway's reports to monitor MC is not a viable alternative. The same reason that the holding company's report cannot be used applies here—the information related to the commuter is obscured.

Concerning Midway's waiver comment, there may be instances when

a wholly owned subsidiary may want to request a waiver and a waiver may be warranted. The Department would consider such a request on a case-by-case basis. Part 298 has a waiver paragraph which states that reporting requirements of that part can be waived in the public interest if (1) unusual circumstances warrant such a departure, (2) a specifically defined alternate procedure will result in a substantially equivalent or more accurate data, and (3) the alternative approach will maintain or improve reporting between air carriers (14 CFR 298.65)

#### *Fitness Factors*

Wings commented that the financial data sought by the rule will not enable DOT to determine a carrier's fitness, since fitness to operate is not determined by a carrier's bottom line or profit and loss. Such items as maintenance and insurance expenses would be much more indicative of a carrier's fitness according to Wings. Wings stated that it uses a significant portion of its revenues to maintain its aircraft above the FAA prescribed minimums, and spends more for liability insurance than the required minimum. Because its net income would be less than a competitor that only meets the minimum requirements, Wings stated it should not be considered less safe than its competitor. Wings cited the large fines and penalties recently imposed on some profitable carriers for safety violations, to demonstrate that net income does not necessarily indicate a carrier's fitness to operate.

The Department agrees that the bottom line is not necessarily indicative of a fit or unfit carrier. Because of this, other aspects of a carrier's operations are considered in a continuing fitness investigation. As explained in the notice of proposed rulemaking, a continuing fitness investigation involves three parts of a carrier's operations—managerial qualifications, compliance with laws and regulations, and financial posture. The profit and loss statement is clearly a part of the financial picture.

Both Wings and RAA stated that fitness from the perspective of safety is a function of the FAA's air carrier inspections and not something that can be ascertained from a carrier's bottom line of its profit and loss statement. RAA further stated that the National Transportation Safety Board conducted extensive hearings in 1980 and found that there is no direct correlation between safety and financial fitness. ALPA-Safety supported the data collection contending that financial stability of a carrier does have a direct

impact on safety. It alleges that, in a deregulated environment, some carriers allow their maintenance, operations, and pilot training to be influenced by the bottom line which at times may not be in the best interests of safety.

The Department agrees that safety issues are considered primarily in the FAA's inspection program rather than the fitness investigation which this rulemaking supports. The fitness criteria were explored very thoroughly when the Civil Aeronautics Board (CAB) amended its regulations by enacting 14 CFR Part 204 "Data to Support Fitness Determinations." (EDR-385, 44 FR 44106, July 26, 1979/ER-1180 45 FR 42599, June 25, 1980). The Department has a continuing fitness responsibility as defined by section 401(r) of the FAA Act. As stated in the NPRM, "In light of the increasingly important role played by commuters in the air transportation system it has become essential for the Department to have the ability to monitor the financial condition of commuter carriers as part of the Department's continuing fitness oversight responsibilities."

#### *Planning and Regulatory Evaluation*

Wings and RAA stated that the number of enplaned passengers, which the Department already collects, is the critical item for planning airports, transportation facilities, air traffic control expansion, etc. Both contended that whether a carrier is making money is irrelevant to the planning function. Also, RAA stated that the enplanement data provided by certificated air carriers and commuters are also sufficient for evaluating costs and benefits of new regulations.

While the Department agrees that data on enplaned passengers are an important analytical tool, financial data are also important. As stated in the NPRM, a valid financial base is necessary to project commuter costs and yields for econometric models that are used for planning purposes. These models relate economic activity and cost variables to commuter traffic and airport activity. An example of a cost variable used in a commuter model is "real" yield. This variable represents the real price increase in airline fares, discounting inflation, and is used in the model to forecast revenue passenger-miles. First the current dollar yield is derived by dividing passenger revenue by revenue passenger-miles. Real yield is then derived by dividing the current yield by the Consumer Price Index. The real yield is then combined with one or more demand variables to generate traffic forecasts for assessing future aeronautic needs (48 FR 36601, August

12, 1983). Currently, FAA is using passenger revenue reported by approximately 50 small certificated air carriers to forecast the aeronautic needs of the commuter industry (approximately 125 commuters). The same small certificated air carrier group's data are used to perform regulatory evaluations of new regulations. Clearly, it is in the interest of the public and the commuter industry to have the best information available when planning for future aeronautic needs. Overstating activity levels could cause FAA to overbuild and spend public funds unnecessarily. On the other hand, understating activity could lead to major disruptions in the national air transportation system.

#### *Trust Fund Revenue and Aircraft Loan Guarantee*

RAA stated that it finds it ironic that DOT wants to require commuters to provide financial data to estimate trust fund revenues, when the government refuses to spend the money already in the fund. In the same vein, RAA stated that the information is not needed for monitoring the Aircraft Loan Guarantee Program which expired in 1983. According to RAA, there are only six regional air carriers having an outstanding loan balance of over \$11 million at May 31, 1988, which hardly justifies the imposition of a reporting burden on the entire industry. Midway stated that the loan program did not apply to MC.

The question of spending trust fund revenue raises policy issues that are irrelevant to, and outside the scope of this proceeding. As far as the loan program, the Department would not require reporting by the entire commuter industry solely to monitor six carrier loans which will all be due by the mid-1990's. The loan program is only one of several programs for which the Department would use the information. Since FAA has to waive any loan conditions that are not met, the Department agrees with RAA that it will ultimately know when a carrier is in difficulty. However, the availability of recurrent financial information will provide an early warning before a carrier actually defaults. The commuter industry is very volatile and a carrier's financial picture can change rapidly.

#### *Balance Sheet Data*

ALPA-Economics agreed with the proposed data collection, but felt the Department did not go far enough. It felt that since Part 204 requires balance sheet information for fitness reviews, the rule should also require balance sheet data.

Balance sheet data are not an issue in this rulemaking since they were not proposed. However, the needs of the Department were very carefully reviewed before the NPRM was issued. It should be noted that no program manager expressed a need for recurrent collection of balance sheet data.

#### *Due Dates*

The NPRM proposed a due date of 40 days after the end of the reporting period for submitting the data. Metro stated that the interval should be 45 days to conform with SEC requirements.

All schedules in the Form 289-C report are based on a 40-day interval and commuters are already filing two traffic schedules based on this interval. The Department is not persuaded to change the 40-day interval which has been a standard for about 20 years.

#### *Confidentiality*

Wings and RAA expressed concerns about confidentiality. Both stated that many commuters are privately held companies and damage could result from disclosing the information to third parties under the Freedom of Information Act (FOIA) or to other Federal agencies. Both expressed concern about the competitive harm that could result from disclosure. They stated that total operating revenues and expenses are critical information to commuters. Disclosure could facilitate intrusions into a carrier's markets which might be unable to support additional service, resulting in the possible failure of one or both carriers and loss of service to the community.

The Department believes these concerns to be unfounded. Identical information has been collected from small certificated air carriers since the beginning of 1985. It too was granted a three year confidential period. In over three years experience in dealing with this collection, the carrier's individual data has not been divulged to the public and not even one FOIA request has been received. Should an FOIA request be received, Departmental policy on "confidential commercial information" provides business submitters of data both notification and an opportunity to object before a disclosure determination is made. The Department will take into account the views of the commuters providing the data should a request for release be received. Finally, the confidential period of three years is long enough to greatly diminish the alleged value of the data.

ALPA-Economics stated that because the commuters play a significant part in the air transportation system, the

information is in the public interest and the Department can no longer justify granting confidential treatment to it. It believes that if the Department is going to monitor the financial condition of each commuter in order to protect the public interest, it is only reasonable to conclude that the prompt release of the information will result in even closer scrutiny and a concomitant increase in the protection accorded the public. Moreover, the need for protection is heightened by the marketing alliances which have developed between the many certificated air carriers and commuters.

As stated in the NPRM, the CAB tried to collect this information on a voluntary basis from commuters in the early 1980's with the firm of Dun and Bradstreet acting as a collection agent. The voluntary approach was not successful. There was a reluctance on the part of commuters, who were privately owned, to submit data that would be publicly disclosed. Because many commuters are still privately owned, the Department feels there would still be this reluctance to submit sensitive information, if the data were immediately available to the public. To allay any fears and to assure ready compliance with this rule, the Department will maintain the financial information confidential for three years as proposed.

#### Administrative Notices

Executive Orders 12291, 12612, and 12630; Departmental Policy and Procedures; Regulatory Flexibility Act; and Paperwork Reduction Act of 1980, as amended.

The final rule has been reviewed under Executive Order 12291, and it has been determined that it is not a major rule. It will not result in an annual effect on the economy of \$100 million or more. There will be no increase in production costs or prices for consumers, individual industries, Federal, State or local governments, agencies or geographical regions. Furthermore this rule would not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States based enterprises to compete in domestic or export markets. This regulation will result in a very slight increase in reporting burden for commuter air carriers (see Regulatory Flexibility Act analysis section).

This action has been analyzed in accordance with the principles and criteria in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and it has been determined that it does not pose the risk of a taking of constitutionally protected private property.

This regulation is not significant under the Department's Regulatory Policies and Procedures, dated February 26, 1979, as it does not involve important Departmental policies. Its economic impact is minimal and full regulatory evaluation is not required. The rule only affects the scheduled passenger commuter air carrier industry.

#### Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96-354) requires regulatory flexibility analyses for rules that, if adopted, will have a "significant economic impact on a substantial number of small entities." Under the Act, both an increase or decrease in economic impact must be considered by the agency.

Under DOT's definition, a direct air carrier is considered to be a "small entity" if it provides air transportation only with small aircraft as defined in 14 CFR 399.73 (up to 60 seats and/or up to 18,000 pounds payload capacity). The rule will affect commuter air carriers providing scheduled passenger service. This group fits the definition of small entity within the meaning of the Act and DOT regulation.

This final rule will add four financial data elements that will be filed on a quarterly basis. These elements are (1) Total Operating Revenues, (2) Total Operating Expenses, (3) Net Income or (Loss), and (4) Passenger Revenues—Scheduled Service. It is estimated that this reporting requirement will result in a slight increase in costs for commuters. However, no comments were received concerning costs. The CAB staff conducted a survey of commuters in 1980 to determine, among other things, the marginal costs attributable to filing a balance sheet, income statement and appropriate notes on a quarterly basis. The balance sheet contained 26 elements while the income statement contained 19 elements. Based on this survey, it was estimated that average first year costs, including start-up costs, would be \$1900 per carrier. The annual recurring costs after the first year were estimated at \$1200 per carrier. Adjusting for inflation, these costs at 1987 would be estimated at \$2600 and \$1650, respectively.

The four income and expense data elements in this rule represent a great deal less data than the CAB survey considered. The financial data are a type generally maintained by all

companies for Federal and state tax purposes, as well as their own management purposes. Except for Metro's and Midway's comments because of their organizational structures, no one commented that the data were not readily available. With respect to passenger revenues, carriers are required to file with the Internal Revenue Service a quarterly excise tax return on the transportation of passengers, but such returns are held confidential (26 CFR 49.6011(a)-1). Consequently, it is estimated that the start-up and recordkeeping costs would be nominal with minimal small recurring costs. Based on a per element cost using 1987 figures, the first year costs for a carrier would be approximately \$235 with recurring costs of approximately \$155 thereafter. On an industry basis, first year costs would approximate \$29,200 with \$19,400 in recurring costs.

Based on the above analysis, I certify that this rule will not have a significant impact on the scheduled passenger commuter air carrier industry.

#### Paperwork Reduction Act of 1980

Carrier reporting burden for this collection of information is estimated to vary from 1 to 5 hours per quarterly response depending on the sophistication of the carrier's accounting system, with an average of 2 hours per quarterly response, including time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the reporting form. Send any comments regarding this burden estimate or any aspect of this collection of information, including suggestions for reducing the reporting burden, to:

Director, Office of Aviation Information Management, DAI-1, Research and Special Programs Administration, DOT, 400 Seventh Street SW., Washington, DC 20590, and Office of Information and Regulatory Affairs, DOT/RSPA Desk Officer, Office of Management and Budget, Washington, DC 20503.

#### List of Subjects in 14 CFR Part 298

Air carriers, Registration, Insurance, Reporting.

#### Final Rule

Accordingly, the Department of Transportation amends 14 CFR Part 298, *Exemptions for Air Taxi Operators* as follows:

#### PART 298—[AMENDED]

1. The authority for Part 298 continues to read:

Authority: Secs. 204, 401, 407, 416, 418, 419, Pub. L. 85-726, as amended, 72 STAT. 743, 754, 766, 711; 91 STAT. 1284; 49 U.S.C. 1324, 1371, 1377, 1386, 1388.

2. Section 298.62 *Reporting of financial data* is amended by revising paragraph (a) and republishing paragraph (c) to read as follows:

**§ 298.62 Reporting of financial data.**

(a) Each commuter air carrier and each small certificated air carrier shall file RSPA Form 298-C, Schedule F-1 "Report of Financial Data." This report shall be filed quarterly as set forth in § 298.60 of this part.

\* \* \* \* \*

(c) This schedule shall be used to report financial data for the overall or system operations of the carrier. At the option of the carrier, the data may be reported in whole dollars by dropping the cents. Financial data shall be reported in the following categories:

(1) Line 1 "Total Operating Revenues" shall include gross revenues accruing from services ordinarily associated with air transportation and air transportation-related services. This category shall include revenue derived from scheduled service operations, revenue derived from nonscheduled service operations, amounts of compensation paid to the carrier under

section 419 of the Federal Aviation Act and other transport-related revenue such as in-flight sales, restaurant and food service (ground), rental of property or equipment, limousine service, cargo pick-up and delivery charges, and fixed-base operations involving the selling or servicing of aircraft, flying instructions, charter flights, etc.

(2) Line 2 "Total Operating Expenses" shall include expenses of a character usually and ordinarily incurred in the performance of air transportation and air transportation services. This category shall include expenses incurred directly in the in-flight operation of aircraft; in the holding of aircraft and aircraft personnel in readiness for assignment to an in-flight status; on the ground in controlling and protecting the in-flight movement of aircraft; landing, handling or servicing aircraft on the ground; selling transportation; servicing and handling traffic; promoting the development of traffic; and administering operations generally. This category shall also include expenses which are specifically identifiable with the repair and upkeep of property and equipment used in the performance of air transportation, all depreciation and amortization expenses applicable to property and equipment used in providing air transportation services, all

expenses associated with the transport-related revenues included on line 1 of this schedule, and all other expenses not specifically mentioned which are related to transport operations. Interest expense and other nonoperating expenses attributable to financing or other activities which are extraneous to and not an integral part of air transportation or its incidental services shall not be included in this category.

(3) Line 3 "Net Income or (Loss)" shall reflect all operating and nonoperating items of profit and loss recognized during the period except for prior period adjustments.

(4) Line 4 "Passenger Revenues-Scheduled Service" shall include revenue generated from the transportation of passengers between pairs of points which are served on a regularly scheduled basis.

\* \* \* \* \*

3. A copy of RSPA Form 298-C, Schedule F-1 is attached as Exhibit A.

Note: Exhibit A will not appear in the Code of Federal Regulations.

Issued in Washington, DC, on November 23, 1988.

M. Cynthia Douglass,  
Administrator, Research and Special  
Programs Administration, DOT.

## Exhibit A

REPORT OF FINANCIAL DATA	Air Carrier (Corporate name including DBA) <hr/> Quarter Ended _____ 19__
<p style="text-align: center;"><u>Financial</u></p> <p>(1) Total Operating Revenues _____</p> <p>(2) Total Operating Expenses _____</p> <p>(3) Net Income _____</p> <p>(4) Passenger Revenues--Scheduled Service _____</p>	

RSPA Form 298-C Schedule F-1

[FR Doc. 88-27488 Filed 11-30-88; 8:45 am]  
BILLING CODE 4910-62-M

## DEPARTMENT OF COMMERCE

## Bureau of Export Administration

## 15 CFR Part 799

[Docket No. 80878-8178]

## Machine Tools and Dimensional Inspection Machines; Clarification

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

**SUMMARY:** The Bureau of Export Administration maintains the Commodity Control List (CCL) (Supplement No. 1 to 15 CFR 799.1), which specifies those items subject to Department of Commerce export controls. Numerically controlled machine tools and dimensional inspection machines are controlled under Export Control Commodity Number (ECCN) 1091A on the CCL.

This document correctly amends paragraph (b) of ECCN 1091A to clarify codification problems arising from publication of "Removal of Validated License Controls on Jig Grinders Exported to Country Groups QWY" (53 FR 7733, Mar. 10, 1988) and "Amendments to the Commodity Control List Based on Coordinating Committee Review" (53 FR 18271, May 23, 1988). The March 1988 regulations redesignated paragraph (b)(ii) as paragraph (b)(iii), added a new paragraph (b)(ii), and revised the newly redesignated paragraph (b)(iii) introductory text. The May 1988 regulations incorrectly revised paragraph (b)(ii), which had been redesignated as (b)(iii), and incorrectly added a paragraph (b)(iii), which already existed. The May 1988 regulations should have revised paragraph (b)(iii) and added a new paragraph (b)(iv). This document, rather than correcting the amendatory language and codification of the May 1988 regulations, correctly revises paragraphs (b) (ii) and (iii) and adds

paragraph (b)(iv) for the convenience of the reader.

EFFECTIVE DATE: December 1, 1988.

**FOR FURTHER INFORMATION CONTACT:** Larry Hall, Office of Technology and Policy Analysis, Department of Commerce, Washington, DC 20230, Telephone: (202) 377-8550.

## SUPPLEMENTARY INFORMATION:

## Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. This rule does not contain a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

3. This rule does not contain policies with Federalism implications sufficient

to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a)) no initial or final Regulatory Flexibility has to be or will be prepared.

5. Section 13(a) of the Export Administration Act of 1979 (EAA), as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Accordingly, this rule is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Comments should be submitted to: Joan Maguire, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

#### List of Subjects in 15 CFR Part 799

Exports, Reporting and recordkeeping requirements.

Accordingly, Part 799 of the Export Administration Regulations (15 CFR Parts 768-799) is amended as follows:

#### PART 799—[AMENDED]

1. The authority citation for Part 799 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981 by Pub. L. 100-418 of August 23, 1988, and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

#### Supplement No. 1 to § 799.1 [Amended]

2. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 0 (Metal-Working Machinery), ECCN 1091A is amended by revising paragraphs (b) (ii) and (iii) and by adding paragraph (b)(iv) to read as follows:

**1091A Numerical control units, numerically controlled machine tools, dimensional inspection machines, direct numerical control systems, specially designed sub-assemblies, and "specially designed software". \* \* \***

\* \* \*

(b) \* \* \*

(ii) Jig grinders having all of the following characteristics:

(1) Overall positioning accuracy in any axis equal to or greater (coarser) than:

(A)  $\pm 0.005$  mm (0.0002 in.) for machines with a total length of axis travel equal to or less than 300 mm (12 in.);

or

(B)  $\pm (0.005 + ((0.002/300) \times (L-300))$  mm (with L expressed in mm) [or  $0.0002 + ((0.000080/12) \times (L-12))$  in. (with L expressed in inches)] for machines with a total length of axis travel, L, greater than 300 mm (12 in.); and

(2) Not more than 2 axes capable of simultaneously coordinated contouring motion.

(iii) Machine tools (other than boring mills, milling machines, and machining centers, described in paragraph (b)(i) having all of the following characteristics:

(1) Radial axis motion measured at the spindle axis equal to or greater than 0.0008 mm TIR (peak-to-peak) in one revolution of the spindle (for lathes, turning machines, contour grinding machines, *etc.*);

(2) Meeting the requirements of paragraphs (b) (i)(1)(A), (i)(6) and (i)(7);

(iv) Dimensional inspection machines, having all of the following characteristics:

(1) A linear positioning accuracy equal to or worse than:

(A)  $\pm (3 + L/300)$  micrometer for L shorter than or equal to 3,300 mm;

(B)  $\pm 14$  micrometer for L longer than 3,300 mm;

(2) A rotary accuracy of equal to or worse than 5 seconds for every 90 degrees; and

(3) Meeting the requirements of (b)(i)(1);

(For high precision turning machinery, see also ECCN 1370A.)

\* \* \*

Dated: November 23, 1988.

Michael E. Zacharia,  
Assistant Secretary for Export  
Administration.

[FR Doc. 88-27470 Filed 11-30-88; 8:45 am]

BILLING CODE 3510-DT-M

#### FEDERAL TRADE COMMISSION

#### 16 CFR Part 13

[Dkt. C-3235]

#### Nasser Chahmirzadi, M.D.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, Nasser Chahmirzadi, M.D., a Rhode Island obstetrician, from dealing with any government health care program on collectively determined terms or from collectively refusing to deal with any government health care program.

**DATE:** Complaint and Order issued August 26, 1988.<sup>1</sup>

**FOR FURTHER INFORMATION CONTACT:** Jane R. Seymour, FTC/S-2115, Washington, DC 20580. (202) 326-2687.

**SUPPLEMENTARY INFORMATION:** On Wednesday, June 1, 1988, there was published in the Federal Register, 53 FR 19930, a proposed consent agreement with analysis in the Matter of Nasser Chahmirzadi, M.D., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

A comment was filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Combining Or Conspiring: Section 13.384 Combining or conspiring; § 13.385 To boycott seller-suppliers; § 13.430 To enhance, maintain or unify prices; § 13.433 To fix prices; § 13.470 To

<sup>1</sup> Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

restrain and monopolize trade; § 13.497 To terminate or threaten to terminate contracts, dealings, franchises, etc. Subpart—Corrective Actions And/Or Requirements: Section 13.533 Corrective actions and/or requirements; § 13.533–20 Disclosures; § 13.533–45 Maintain records; § 13.533–45(k) Records, in general; § 13.533–50 Maintain means of communication. Subpart—Cutting Off Supplies Or Service: Section 13.610 Cutting off supplies or service; § 13.660 Threatening withdrawal of patronage.

#### List of Subjects in 16 CFR Part 13

Obstetricians, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Benjamin I. Berman,  
*Acting Secretary.*

[FR Doc. 88–27642 Filed 11–30–88; 8:45 am]

BILLING CODE 6750–01–M

#### 16 CFR Part 13

[Dkt. C–3236]

#### James C. Gedney, M.D.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, James C. Gedney, M.D., a Rhode Island obstetrician, from dealing with any government health care program on collectively determined terms or from collectively refusing to deal with any government health care program.

**DATE:** Complaint and Order issued August 26, 1988.<sup>1</sup>

**FOR FURTHER INFORMATION CONTACT:** Jane R. Seymour, FTC/S–2115, Washington, DC 20580. (202) 326–2687.

**SUPPLEMENTARY INFORMATION:** On Wednesday, June 1, 1988, there was published in the *Federal Register*, 53 FR 19930, a proposed consent agreement with analysis in the Matter of James C. Gedney, M.D., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

A comment was filed and considered by the Commission. The Commission

has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Combining Or Conspiring: Section 13.384 Combining or conspiring; § 13.385 To boycott seller-suppliers; § 13.430 To enhance, maintain or unify prices; § 13.433 To fix prices; § 13.470 To restrain and monopolize trade; § 13.497 To terminate or threaten to terminate contracts, dealings, franchises, etc. Subpart—Corrective Actions And/Or Requirements: Section 13.533 Corrective actions and/or requirements; § 13.533–20 Disclosures; § 13.533–45 Maintain records; § 13.533–45(k) Records, in general; § 13.533–50 Maintain means of communication. Subpart—Cutting Off Supplies Or Service: Section 13.610 Cutting off supplies of service; § 13.660 Threatening withdrawal of patronage.

#### List of Subjects in 16 CFR Part 13

Obstetricians, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Benjamin I. Berman,  
*Acting Secretary.*

[FR Doc. 88–27641 Filed 11–30–88; 8:45 am]

BILLING CODE 6750–01–M

#### 16 CFR Part 13

[Dkt. C–3234]

#### Donald A. Guadagnoli, M.D.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, Donald A. Guadagnoli, M.D., a Rhode Island obstetrician, from dealing with any government health care program on collectively determined terms or from collectively refusing to deal with any government health care program.

**DATE:** Complaint and Order issued August 26, 1988.<sup>1</sup>

<sup>1</sup> Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** L. Barry Costilo, FTC/S–3115, Washington, DC 20580. (202) 326–2748.

**SUPPLEMENTARY INFORMATION:** On Wednesday, June 1, 1988, there was published in the *Federal Register*, 53 FR 19930, a proposed consent agreement with analysis in the Matter of Donald A. Guadagnoli, M.D., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

A comment was filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Combining Or Conspiring: Section 13.384 Combining or conspiring; § 13.385 To boycott seller-suppliers; § 13.430 To enhance, maintain or unify prices; § 13.433 To fix prices; § 13.470 To restrain and monopolize trade; § 13.497 To terminate or threaten to terminate contracts, dealings, franchises, etc. Subpart—Corrective Actions And/Or Requirements: Section 13.533 Corrective actions and/or requirements; § 13.533–20 Disclosures; § 13.533–45 Maintain records; § 13.533–45(k) Records, in general; § 13.533–50 Maintain means of communication. Subpart—Cutting Off Supplies Or Service: Section 13.610 Cutting off supplies or service; § 13.660 Threatening withdrawal of patronage.

#### List of Subjects in 16 CFR Part 13

Obstetricians, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Benjamin I. Berman,  
*Acting Secretary.*

[FR Doc. 88–27640 Filed 11–30–88; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3232]

#### Patrick S. O'Halloran, M.D.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent

<sup>1</sup> Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

order prohibits, among other things, Patrick S. O'Halloran, M.D., a Rhode Island obstetrician, from dealing with any government health care program on collectively determined terms or from collectively refusing to deal with any government health care program.

**DATE:** Complaint and Order issued August 26, 1988.<sup>1</sup>

**FOR FURTHER INFORMATION CONTACT:** L. Barry Costilo, FTC/S-3115, Washington, DC 20580. (202) 326-2748.

**SUPPLEMENTARY INFORMATION:** On Wednesday, June 1, 1988, there was published in the *Federal Register*, 53 FR 19930, a proposed consent agreement with analysis in the Matter of Patrick S. O'Halloran, M.D., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

A comment was filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Combining Or Conspiring: Section 13.384 Combining or conspiring; § 13.385 To boycott seller-suppliers; § 13.430 To enhance, maintain or unify prices; § 13.433 To fix prices; § 13.470 To restrain and monopolize trade; § 13.497 To terminate or threaten to terminate contracts, dealings, franchises, etc. Subpart—Corrective Actions And/Or Requirements: Section 13.533 Corrective actions and/or requirements; § 13.533-20 Disclosures; § 13.533-45 Maintain records; § 13.533-45(k) Records, in general; § 13.533-50 Maintain means of communication. Subpart—Cutting Off Supplies Or Service: Section 13.610 Cutting off supplies or service; § 13.660 Threatening withdrawal of patronage.

#### List of Subjects in 16 CFR Part 13

Obstetricians, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

**Benjamin I. Berman,**

*Acting Secretary.*

[FR Doc. 88-27639 Filed 11-30-88; 8:45 am]

**BILLING CODE 6750-01-M**

<sup>1</sup> Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

#### 16 CFR Part 13

[Dkt. C-3237]

#### Douglas G. Wilson, M.D.; Prohibited Trade Practices, and Affirmative Corrective Actions

**AGENCY:** Federal Trade Commission.

**ACTION:** Consent order.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, Douglas G. Wilson, M.D., a Rhode Island obstetrician, from dealing with any government health care program on collectively determined terms or from collectively refusing to deal with any government health care program.

**DATE:** Complaint and Order issued August 26, 1988.<sup>1</sup>

**FOR FURTHER INFORMATION CONTACT:** L. Barry Costilo, FTC/S-3115, Washington, DC 20580. (202) 326-2748.

**SUPPLEMENTARY INFORMATION:** On Wednesday, June 1, 1988, there was published in the *Federal Register*, 53 FR 19930, a proposed consent agreement with analysis in the Matter of Douglas G. Wilson, M.D., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

A comment was filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Combining Or Conspiring: Section 13.384 Combining or conspiring; § 13.385 To boycott seller-suppliers; § 13.430 To enhance, maintain or unify prices; § 13.433 To fix prices; § 13.470 To restrain and monopolize trade; § 13.497 To terminate or threaten to terminate contracts, dealings, franchises, etc. Subpart—Corrective Actions And/Or Requirements: Section 13.533 Corrective actions and/or requirements; § 13.533-20 Disclosures; § 13.533-45 Maintain records; § 13.533-45(k) Records, in general; § 13.533-50 Maintain means of communication. Subpart—Cutting Off

<sup>1</sup> Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

Supplies Or Service: Section 13.610 Cutting off supplies or service; § 13.660 Threatening withdrawal of patronage.

#### List of Subjects in 16 CFR Part 13

Obstetricians, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

**Benjamin I. Berman,**

*Acting Secretary.*

[FR Doc. 88-27643 Filed 11-30-88; 8:45 am]

**BILLING CODE 6750-01-M**

#### DEPARTMENT OF HEALTH AND HUMAN SERVICES

#### Food and Drug Administration

#### 21 CFR Part 520

#### Oral Dosage Form New Animal Drugs Not Subject to Certification; Febantel-Praziquantel Paste

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Mobay Corp., Animal Health Division, providing for the safe and effective use of febantel-praziquantel oral paste for the removal of hookworms (*Uncinaria stenocephala*) and ascarids (*Toxascaris leonina*) in dogs and puppies in addition to other approved uses as a dog and cat anthelmintic.

**EFFECTIVE DATE:** December 1, 1988.

**FOR FURTHER INFORMATION CONTACT:** Marcia K. Larkins, Center for Veterinary Medicine (HFV-112), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3430.

**SUPPLEMENTARY INFORMATION:** Mobay Corp., Animal Health Division, P.O. Box 390, Shawnee Mission, KS 66201, filed supplemental NADA 133-953, which provides for the use of VERCOM Paste (febantel-praziquantel oral paste) in dogs and puppies for the removal of hookworms (*U. stenocephala*) and ascarids (*T. leonina*), in addition to previous approval for treating dogs, puppies, cats, and kittens for certain hookworm, whipworm, ascarid, and tapeworm infections. The supplement is approved and the regulations are amended in 21 CFR 520.903d(c)(2) to reflect the approval. The basis for approval of this NADA is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21

CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

#### List of Subjects in 21 CFR Part 520

##### Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 520 is amended as follows:

#### PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 520 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

2. Section 520.903d is amended by revising paragraph (c)(2)(i) to read as follows:

#### § 520.903d Febantel-praziquantel paste.

(c) \* \* \*

(2) *Indications for use.* (i) Dogs and puppies: For removal of hookworms (*Ancylostoma caninum* and *Uncinaria stenocephala*), whipworms (*Trichuris vulpis*), ascarids (*Toxocara canis* and *Toxascaris leonina*), and tapeworms (*Dipylidium caninum* and *Taenia pisiformis*).

Dated: November 22, 1988.

Gerald B. Guest,  
Director, Center for Veterinary Medicine.  
[FR Doc. 88-27615 Filed 11-30-88; 8:45 am]  
BILLING CODE 4160-01-M

#### 21 CFR Part 558

#### New Animal Drugs for Use in Animal Feeds; Fenbendazole

**AGENCY:** Food and Drug Administration.  
**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the

animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Hoechst-Roussel Agri-Vet Co. The supplement provides for extended treatment times and added claims for use of fenbendazole Type A medicated articles for making Type C medicated swine feeds for use as an anthelmintic.

**EFFECTIVE DATE:** December 1, 1988.

#### FOR FURTHER INFORMATION CONTACT:

John L. Olsen, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4913.

**SUPPLEMENTARY INFORMATION:** Hoechst-Roussel Agri-Vet Co., Route 202-206 North, Somerville, NJ 08876, filed a supplement to NADA 131-675 which provides for use of Safe-Guard® Type A medicated articles (fenbendazole) for making Type C medicated swine feed. In addition to the previously approved uses the supplement provides for extending treatment time from 3 to 12 days. It also provides for efficacy of all treatment regimens against adult stages of *Metastrongylus pudendotectus* and for use for 3 days for removal and control of larvae (L3,4 stages—liver, lung, intestinal forms) of the large roundworm (*Ascaris suum*), and larvae (L2,3,4 stages—intestinal mucosal forms) of the whipworm (*Trichuris suis*).

The supplement is approved and the regulations are amended in 21 CFR 558.258 by revising paragraph (c)(1). The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

#### List of Subjects in 21 CFR Part 558

##### Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

#### PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Section 558.258 is amended by revising paragraph (c)(1) to read as follows:

#### § 558.258 Fenbendazole.

\* \* \* \* \*

(c) *Conditions of use.* (1) It is used in swine feed as follows:

(i) A total of 9 milligrams per kilogram of body weight given over a 3- to 12-day period for the removal of the adult stage of the large roundworm (*Ascaris suum*), whipworm (*Trichuris suis*), nodular worm (*Oesophagostomum dentatum*, *O. quadrispinulatum*), small stomach worm (*Hyostrongylus rubidus*), lungworm (*Metastrongylus apri* and *M. pudendotectus*), and the adult and larval stages of the kidneyworm (*Stephanurus dentatus*).

(ii) A total of 9 milligrams per kilogram of body weight given over a 3-day period for removal and control of larvae (L3,4 stages—liver, lung, intestinal forms) of the large roundworm (*A. suum*), and larvae (L2,3,4 stages—intestinal mucosal forms) of the whipworm (*T. suis*).

(iii) Feed as sole ration.

\* \* \* \* \*

Dated: November 22, 1988.

Gerald B. Guest,  
Director, Center for Veterinary Medicine.  
[FR Doc. 88-27616 Filed 11-30-88; 8:45 am]  
BILLING CODE 4160-01-M

#### DEPARTMENT OF THE TREASURY

#### Internal Revenue Service

#### 26 CFR Parts 1 and 602

[T.D. 8219]

**Income Tax; Taxable Years Beginning After December 31, 1953; OMB Control Number Under the Paperwork Reduction Act; Survivor Benefits, Distribution Restriction and Various Other Issues Under the Retirement Equity Act of 1984**

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Correction of final regulations.

**SUMMARY:** This document contains corrections to the Federal Register publication on Monday, August 22, 1988, beginning at 53 FR 31837 of the final regulations. The final regulations relate

to qualified joint and survivor annuities required to be provided under certain retirement plans under section 401(a)(11) prior to its amendment by the Retirement Equity Act of 1984 (REA 1984). The pre-REA 1984 regulations were changed to conform them to *BBS Associates, Inc. v. Commissioner of Internal Revenue*.

**FOR FURTHER INFORMATION CONTACT:** William D. Gibbs, Office of the Assistant Chief Counsel, Employee Benefits and Exempt Organizations, 202-377-9372 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

On August 22, 1988, final regulations relating to qualified joint and survivor annuities required to be provided under certain retirement plans under section 401(a)(11) were published in the *Federal Register* (53 FR 31837).

**Need for Correction**

As published, the final regulations contain typographical and other errors which may prove to be misleading and are in need of correction.

**Correction of Publication**

Accordingly, the publication of the final regulations (T.D. 8219) which was the subject of FR Doc. 88-18886 (53 FR 31837), is corrected as follows:

**§ 1.401(a)-11 [Corrected]**

1. On page 31842, second column, in § 1.401(a)-11(g)(2)(ii), in the 13th line, "year" should read "years".
2. On page 31842, second column, in § 1.401(a)-11(g)(2)(iii), in the last line, after "REA" add "1984".

**§ 1.401(a)-20 [Corrected]**

3. On page 31843, second column, in § 1.401(a)-20, in the second line of A-5 (a)(2), after "412" add ", or" and remove "or" in the next printed line.
4. On page 31843, second column, in § 1.401(a)-20, the 21st line of A-5 (a)(3) should read "transactions that subject the".
5. On page 31843, third column, in § 1.401(a)-20, the third and fourth line of Q-7 should read "plan, are benefits payable in the form of a QPSA or QJSA?"
6. On page 31845, first column, in § 1.401(a)-20, in the sixth line of A-11 after "or" add "a".
7. On page 31845, third column, in § 1.401(a)-20, in the fifth line of A-16 after "of" add "a".
8. On page 31846, second column, in § 1.401(a)-20, in the 21st line of A-17(b)(4) "would" was misspelled.

9. On page 31846, second column, in § 1.401(a)-20, in the next to the last line of A-18 "QJSA" was misprinted.

10. On page 31847, second column, in § 1.401(a)-20, the first line of A-24(c) should read "(c) *Renegotiation*. For purposes of".

11. On page 31848, third column, in § 1.401(a)-20, in the seventh line of A-31 (c) after "waive" add "a".

12. On page 31849, first column, in § 1.401(a)-20, in the 12th line of A-33 (a) "participant" should read "participant's".

13. On page 31849, second column, in § 1.401(a)-20, in the eighth line of A-35 (a)(4) "a" should read "an".

**§ 1.401(a)-13 [Corrected]**

14. On page 31851, second column, in § 1.401(a)-13(g)(4)(iii)(B), in the first line "alternative" should read "alternate".

**§ 1.410(a)-8 [Corrected]**

15. On page 31851, third column, in § 1.410(a)-8, in the eighth line from the bottom of the column "employeeer" should read "employee".

**§ 1.410(a)-9 [Corrected]**

16. On page 31852, first column, in § 1.410(a)-9(a)(1), line 13 should read "410(a)(5)(E)(i) or 411(a)(6)(E)(i) is the".

17. On page 31852, first column, in § 1.410(a)-9(b), the next to the last line should read "the period of consecutive breaks-in-".

**§ 1.411(a)-7 [Corrected]**

18. On page 31852, second column, in § 1.411(a)-7(d)(2)(ii)(D)(2), in the last two lines of that paragraph "break in service" should read "break-in-service".

19. On page 31852, second column, in § 1.411(a)-7(d)(2)(ii)(E), in the second line "break in service" should read "break-in-service".

20. On page 31852, second column, in § 1.411(a)-7(d)(2)(ii)(E), in the fourth line "break in" should read "break-in-".

**§ 1.411(a)-11 [Corrected]**

21. On page 31853, third column, in § 1.411(a)-11(e)(1), in the 11th and 13th lines after "employer" add a ",,".

**§ 1.411(d)-3 [Corrected]**

22. On page 31854, first column, under "§ 1.411(d)-3 [Amended]", line four of the amendatory instructions of Par. 10. should read "§ 1.411(d)-5 for rules that apply to".

**§ 1.411(d)-3T [Corrected]**

23. On page 31854, first column, under "§ 1.411(d)-3T [Removed]", lines two and three of the amendatory instructions of Par. 11. should read "removed. New § 1.411(d)-5 is added in its place immediately after § 1.411(d)-4".

**§ 1.411(d)-4 [Corrected]**

24. On page 31854, first column, section heading "§ 1.411(d)-4" should read "§ 1.411(d)-5".

25. On page 31854, second column, in correctly designated § 1.411(d)-5(b)(1), fourth line from the top of the column should read "maintained pursuant to collective".

26. On page 31854, second column, in correctly designated § 1.411(d)-5(b)(2)(i), in the seventeenth line "break in service" should read "break-in-service".

**§ 1.417(e)-1 [Corrected]**

27. On page 31854, second column, in § 1.417(e)-1(a)(1), in the eighth line "§ 1.401(a)-11A" should read "§ 1.401(a)-20".

28. On page 31854, second column, in § 1.417(e)-1(a)(2), in the second line "§ 1.411(a)(11)-1(c)(6)" should read "§ 1.411(a)-11".

29. On page 31854, second column, in § 1.417(e)-1(a)(3), in the second line "§ 1.411(a)(11)-1" should read "§ 1.411(a)-11".

30. On page 31855, first column, in § 1.417(e)-1(c), the sixth line should read "immediately distributable, (see)".

31. On page 31855, first column, in § 1.417(e)-1(c), the thirteenth line should read "and consent requirements of section 417".

32. On page 31855, first column, in § 1.417(e)-1(d), the second line, "purpose" should read "purposes".

**§ 602.101 [Corrected]**

33. On page 31856, first column, under "§ 602.101 [Amended]", lines three and four of the amendatory instructions for Par. 14. should read "the table "§ 1.401(a)-20 . . . 1545-0928" and "§ 1.402(f)-1 . . . 1545-0928".

Dale D. Goode,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 88-27494 Filed 11-30-88; 8:45 am]

BILLING CODE 4830-01-M

**COPYRIGHT ROYALTY TRIBUNAL**

**37 CFR Part 304**

**Cost of Living Adjustment for Performance of Musical Compositions by Public Broadcasting Entities Licensed to Colleges and Universities**

**AGENCY:** Copyright Royalty Tribunal.

**ACTION:** Final rule.

**SUMMARY:** The Copyright Royalty Tribunal announces a cost of living adjustment of 4.25% in the royalty rates to be paid by public broadcasting

entities licensed to colleges, universities or other nonprofit educational institutions which are not affiliated with National Public Radio for the use of copyrighted published nondramatic musical compositions. The cost of living adjustment is an annual adjustment required by 37 CFR 304.10(b) of the Tribunal's rules.

**EFFECTIVE DATE:** January 2, 1989.

**FOR FURTHER INFORMATION CONTACT:**

Robert Cassler, General Counsel,  
Copyright Royalty Tribunal, 1111 20th  
Street NW., Suite 450, Washington, DC  
20036, (202) 653-5175.

**SUPPLEMENTARY INFORMATION:** On December 29, 1987, the Copyright Royalty Tribunal published in the *Federal Register* the rates and terms for the copyright compulsory license applicable to the use by public broadcasting entities of published nondramatic musical works and published pictorial, graphic and sculptural works. 52 FR 49010. It was determined in that proceeding that the royalty rate to be paid by public broadcasting entities licensed to colleges, universities or other nonprofit educational institutions which are not affiliated with National Public Radio for the use of copyrighted published nondramatic musical compositions would be adjusted each year according to changes in the Consumer Price Index. 37 CFR 304.10.

The change in the cost of living as determined by the Consumer Price Index from the last Index published prior to December 1, 1987 to the last Index published prior to December 1, 1988 was 4.25% (1988's figure was 120.2; 1987's figure was 115.3, based on 1982-1984 equalling 100). Rounding off to the nearest dollar, the Tribunal announces an adjustment in the royalty rate to apply to use of musical compositions in the repertory of ASCAP and BMI of \$166, each, \$39 for the use of musical compositions in the repertory of SESAC.

**List of Subjects in 37 CFR Part 304**

Copyrights, Music, Radio, Television.

**PART 304—[AMENDED]**

1. The authority citation for Part 304 continues to read as follows:

Authority: 17 U.S.C. 118 and 801 (1976).

**§ 304.5 [Amended]**

2. 37 CFR 304.5 is amended by revising paragraphs (c) (1) through (4).

\* \* \* \* \*

(c) \* \* \*

(1) For all such compositions in the repertory of ASCAP annually: \$166.

(2) For all such compositions in the repertory of BMI annually: \$166.

(3) For all such compositions in the repertory of SESAC annually: \$39.

(4) For the performances of any other such composition: \$1.

\* \* \* \* \*

Dated: November 28, 1988.

Edward W. Ray,

*Acting Chairman.*

[FR Doc. 88-27670 Filed 11-30-88; 8:45 am]

BILLING CODE 1410-09-M

**ENVIRONMENTAL PROTECTION  
AGENCY**

**40 CFR Part 52**

[FRL-3484-9]

**Approval and Promulgation of  
Implementation Plans; State of  
California, Sacramento Ozone Plan**

**AGENCY:** Environmental Protection  
Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This notice announces EPA's final disapproval of the California State Implementation Plan (SIP) for ozone in the Sacramento Air Quality Maintenance Area (AQMA). This final action is being taken because the SIP for the Sacramento AQMA does not provide for attainment of the ozone national ambient air quality standard (NAAQS) by the statutory deadline of December 31, 1987, or by any other fixed date, as required by section 172(a) of the Clean Air Act ("the Act") (42 U.S.C. 7502(a)). Pursuant to section 110(a)(2)(I) of the Act and EPA's implementing regulations, this disapproval results in the imposition of a moratorium on the construction and modification of major stationary sources of volatile organic compounds (VOC) in the Sacramento AQMA. See 40 CFR 52.24 and 42 U.S.C. 7410(a)(2)(I).

**EFFECTIVE DATES:** EPA's disapproval of the Sacramento ozone SIP is effective

January 3, 1989. The ban on construction or modification of major sources is effective January 3, 1989.

**FOR FURTHER INFORMATION CONTACT:**

Wallace D. Woo, Chief, State Liaison Section, Air Management Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, California 94105, Telephone: (415) 974-7634, (FTS) 454-7634.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

A brief background of the Act and the history of the Sacramento SIP is provided here. For a more comprehensive description of the relevant requirements of the Act and EPA's regulatory actions on the Sacramento SIP, see the proposed disapproval of the SIP for Sacramento and four other areas in California (52 FR 26431, July 14, 1987) and the General Preamble accompanying that notice (52 FR 26404).

The Clean Air Act mandates a system of state implementation plans as the chief mechanism for meeting the NAAQS. Section 110(a)(1) directs the state to submit, within nine months from the promulgation of primary NAAQS, a plan for implementing those NAAQS. Section 110 lays out the requirements that the plan must meet and provides a mechanism for revision of the plan where the Administrator finds that the plan is substantially inadequate to achieve the NAAQS by the relevant deadline.

Recognizing that numerous areas had not been able to attain the NAAQS within the initial timeframe, Congress added Part D to the Act in 1977. Part D allowed certain "nonattainment" areas to extend the time for attainment to December 31, 1982, with the exception that certain areas, in which it was "not possible" to meet that deadline for ozone and carbon monoxide (CO) despite the application of all reasonably available control measures, could apply for a further extension to December 31, 1987.

California requested, and EPA approved, an extension of the statutory attainment date for ozone in the Sacramento AQMA to December 31, 1987. The State then submitted 1982 plan

updates for the California ozone SIP for Sacramento and several other areas. In 1983, EPA proposed to disapprove these revisions and impose a construction ban on the ground that the plan did not provide for attainment of the ozone standard by the end of 1987, or reasonable further progress in the interim. 48 FR 5074 (February 3, 1983). On July 30, 1984, EPA took final action to approve the control measures submitted by the State, but held open the question of whether to approve the attainment demonstration in the SIP submittal for Sacramento and for three other areas of California (South Coast, Fresno, and Ventura) similarly lacking approvable SIP attainment demonstrations for ozone or carbon monoxide. 49 FR 30300, 30305 (July 30, 1984).

In July 1987, EPA republished to disapprove the ozone SIP for Sacramento, South Coast, Fresno, Ventura and several other areas. 52 FR 26408-26409, 26431-26435 (July 14, 1987). In that notice, EPA stated that it lacked authority to continue to defer action on the plans for those areas that had not yet submitted a plan demonstrating attainment by the deadline, and that it had no choice but to disapprove the plans for those areas and impose a construction ban under section 110(a)(2)(I).

In November 1987, the Ninth Circuit Court of Appeals issued its opinion in *Abramowitz v. United States Environmental Protection Agency*, 832 F.2d 1071 (9th Cir. 1987). The court held that EPA lacked authority to defer action on whether the South Coast ozone and carbon monoxide plan meets all of the Part D requirements of the Act when the Agency approved the individual control measures. The court ordered EPA to "disapprove the relevant SIP provisions." 832 F.2d at 1079. Pursuant to the Ninth Circuit Court's instructions, EPA took final action in January 1988 to disapprove the South Coast SIP. 53 FR 1780 (January 22, 1988). EPA also took final action in September 1988 to disapprove Ventura County's ozone SIP. 53 FR 39087 (September 28, 1988).

## B. Discussion

EPA concludes that the attainment demonstration deficiency in the Sacramento ozone SIP is substantially identical to the deficiencies in the South Coast CO and ozone SIP and the Ventura ozone SIP, and EPA is therefore now taking final action to disapprove the Sacramento ozone SIP. The ground for EPA's final disapproval of the Sacramento SIP is that it does not demonstrate attainment of the ozone NAAQS by December 31, 1987, or by any other fixed date (near-term or otherwise) thereafter. Under the terms of the Act and EPA's regulations, such final plan disapproval results in the imposition of a construction ban in the Sacramento AQMA for major new sources and major modifications of existing sources of VOC.<sup>1</sup> Section 110(a)(2)(I); 49 CFR 52.24(a). Under 40 CFR 52.24 (f)(4)(ii) and (f)(5)(i), a major stationary source or major modification that is major for VOC is also major for ozone.

Today's action is also driven by the reasoning of the decision in *Abramowitz*. That decision establishes that EPA has no discretion under the law to postpone the final disapproval when the Agency has effectively determined that the plan does not provide for timely attainment. Thus, EPA is not responding directly to public comments on EPA's July 14, 1987 proposal. EPA may respond to some of the comments in the future, perhaps in connection with EPA's final policy on how areas like Sacramento should correct their SIPs after December 31, 1987.

## C. Final Action

EPA is today taking final action to disapprove the 1982 Sacramento AQMA SIP revision for attainment of the primary NAAQS for ozone. Pursuant to the Administrative Procedure Act, 5 U.S.C. 553(d), this disapproval is effective January 3, 1989. The effective date for the construction ban is January 3, 1989.

Under Executive Order 12291, this action is not "Major." It has been submitted to the Office of Management and Budget for review.

Under the Regulatory Flexibility Act, 5 U.S.C. 605(b), EPA must assess the

impact of proposed or final rules on small entities. EPA does not have sufficient information to determine the impacts that the construction moratorium announced in today's notice may have on small entities, because it is difficult to obtain reliable information on future plans for business growth. Even if this action were to have a significant impact, however, the Agency could not modify its action. Under the Act, the imposition of a construction moratorium is mandatory whenever the Agency determines that an implementation plan for a nonattainment area fails to meet the requirements of Part D of the Act, and that determination, in turn, is effectively required by the Ninth Circuit's decision in *Abramowitz*.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 30, 1989. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

## List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Intergovernmental relations.

Dated: November 28, 1988.

Lee M. Thomas,  
Administrator.

40 CFR Part 52, Subpart F, is amended as follows:

## PART 52—[AMENDED]

### Subpart F—California

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.237 is amended by adding new paragraph (a)(3) to read as follows:

#### § 52.237 Part D disapproval.

(a) \* \* \*

(3) The ozone attainment demonstration for the Sacramento AQMA. No major stationary source, or major modification of a stationary source, of volatile organic compounds may be constructed in the Sacramento nonattainment area unless the construction permit application is complete on or before January 3, 1989.

\* \* \* \* \*

[FR Doc. 27760 Filed 11-30-88; 8:45 am]

BILLING CODE 6560-50-M

## 40 CFR Part 52

[FRL-3478-2]

### Approval and Promulgation of State Implementation Plans; Revision to Regulation No. 3, Visibility Protection; Colorado

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

**SUMMARY:** In this action, EPA is approving revisions to the Colorado Air Quality Control Commission (AQCC) Regulation No. 3 (Sections IV and XIV) of the Colorado State Implementation Plan (SIP) pertaining to New Source Review (NSR) visibility protection in mandatory Class I Federal areas. This action results from a rulemaking on July 12, 1985 (50 FR 28544), in which EPA promulgated Federal regulations for visibility NSR (40 CFR 51.307) in states which failed to comply with the provisions of 40 CFR 51.307.

On May 8, 1986, the Governor of Colorado submitted a revision to AQCC Regulation No. 3 (Section IV) of the SIP to include visibility NSR protection in mandatory Class I Federal areas from sources locating in nonattainment areas. Also included in the submittal is a revision to AQCC Regulation No. 3 (Section XIV) which provides for visibility protection in mandatory Class I Federal areas from sources locating in attainment areas. AQCC Regulation No. 3, Section XIV was originally submitted on April 18, 1983, as part of Colorado's Prevention of Significant Deterioration (PSD) regulations.

EPA's approval of the attainment and nonattainment NSR procedures for visibility protection apply only to those source categories regulated by previously approved NSR and PSD regulations. Colorado's Visibility NSR regulations meet the criteria of 40 CFR 51.307, and these regulations will replace, where appropriate, the Federal Visibility NSR regulations now in effect for Colorado.

**EFFECTIVE DATE:** December 1, 1988.

**ADDRESSES:** Copies of the submittal are available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at the following offices:

Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202-2405  
Environmental Protection Agency, Public Information Reference Unit, Waterside Mall, 401 M Street, SW., Washington, DC 20460.

<sup>1</sup> The Sacramento Air Quality Maintenance Area includes all of Sacramento and Yolo Counties and portions of Placer and Solano Counties. Within this area, any major new source or major modification for which the construction permit application is incomplete on or after January 3, 1989 will be prohibited from construction. EPA's criteria for determining an application to be complete are explained in 52 FR 26404 and 26409 n.18 (July 14, 1987).

**FOR FURTHER INFORMATION CONTACT:**

Michael Silverstein, Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202-2405, (303) 293-1769.

**SUPPLEMENTARY INFORMATION:****Background**

Section 169A of the Clean Air Act (Act), 42 U.S.C. 7491, requires visibility protection for mandatory Class I Federal areas where EPA has determined that visibility is an important value. ("Mandatory Class I Federal areas" (hereinafter Class I areas) are certain national parks, wilderness areas, and international parks, as described in section 162(a) of the Act, 42 U.S.C. 7472(a), 40 CFR 81.400-81.437.) Section 169A specifically requires EPA to promulgate regulations requiring certain states to amend their SIPs to provide for visibility protection.

On December 2, 1980, EPA promulgated the required visibility regulations in 45 CFR 80084, codified at 40 CFR 51.300 *et seq.* It required the states to submit their revised SIPs to satisfy those provisions by September 2, 1981 (see 45 FR 80091, codified at 40 CFR 51.302(a)(1)). That rulemaking resulted in numerous parties seeking judicial review of the visibility regulations. In March 1981, the court stayed the litigation, pending EPA action on related administrative petitions for reconsideration of the visibility regulations filed with the Agency.

In December 1982, the Environmental Defense Fund (EDF) filed suit in the U.S. District Court for the Northern District of California alleging that EPA failed to perform a nondiscretionary duty under section 110(c) of the Act to promulgate Visibility SIPs (hereinafter Federal Implementation Plans (FIPs)). A negotiated Settlement Agreement between EPA and EDF required EPA to promulgate Visibility FIPs on a specific schedule. It required EPA to propose to incorporate Federal regulations in states where SIPs were deficient with respect to the 1980 Visibility NSR regulations (40 CFR 51.307). However, the Settlement Agreement allowed each State an opportunity to avoid Federal promulgation if it submitted an SIP by May 8, 1985. Colorado was one of the states that did not meet this deadline. Final promulgation of Federal Visibility NSR regulations for all states (including Colorado) having deficient SIPs was published on July 12, 1985 (49 FR 28544), and became effective August 12, 1985.

On April 18, 1983, the Governor of Colorado submitted to EPA Colorado's PSD Regulation (Regulation No. 3) which

included Section XIV, providing for visibility protection in Class I areas from sources locating in attainment areas. This revision to the Colorado SIP was adopted by the Colorado Air Quality Control Commission (AQCC) March 10, 1983. EPA approved this PSD revision to the Colorado SIP with some source category exemptions on September 2, 1986 (51 FR 31125). No action was taken with respect to the Colorado regulation for visibility protection in Class I areas at that time. Therefore, the EPA promulgated visibility regulations remained in effect.

On May 8, 1986, the Governor of Colorado submitted to EPA a revision to AQCC Regulation No. 3 which was adopted on March 20, 1986. This revision adds Section IV.D.2.a.(vi) to AQCC Regulation No. 3, providing for NSR visibility protection in Class I areas from sources locating in nonattainment areas. This addition requires an applicant to demonstrate that emissions from a new or modified source locating in a nonattainment area will not adversely impact visibility in a Class I area. Visibility analyses and/or comments from the Federal Land Manager (FLM) must be considered in the decision to grant or deny the permit. In addition to adding Section IV.D.2.a.(vi) to AQCC Regulation No. 3, the May 8, 1986, submittal again included Section XIV in response to EPA's promulgated Visibility NSR regulations.

On March 31, 1987 (52 FR 10239), EPA proposed to approve both the attainment and nonattainment NSR procedures for visibility protection for source categories regulated by the NSR and PSD regulations which have previously been approved by EPA. However, Colorado's NSR and PSD regulations have been disapproved for certain sources as described in 46 FR 21180 (April 30, 1981) and 51 FR 31125 (September 2, 1986), respectively. The EPA promulgated Visibility NSR regulations will remain in effect for these sources.

**Affected Areas**

The following areas in Colorado are Class I areas where visibility is an important value:

Black Canyon of the Gunnison Wilderness  
Eagles Nest Wilderness  
Flat Tops Wilderness  
Great Sand Dunes Wilderness  
La Garita Wilderness  
Maroon Bells-Snowmass Wilderness  
Mesa Verde National Park  
Mount Zirkel Wilderness  
Rawah Wilderness

Rocky Mountain National Park  
Weminuche Wilderness  
West Elk Wilderness

**New Source Review**

States are required by 40 CFR 51.307 to review new major stationary sources and major modifications prior to construction to assess potential impacts on visibility in any visibility protection area, regardless of the air quality status of the area in which the source is located. That is, sources locating in attainment areas and nonattainment areas must undergo Visibility NSR (see 40 CFR 51.307 (a) and (b)(2), respectively). These requirements ensure: (1) That the visibility impact review is conducted in a timely and consistent manner; (2) that the reviewing authority considers any timely FLM analysis demonstrating that a proposed source would have an adverse impact on visibility; and (3) the public availability of the permitting authority's conclusion.

There are two parts to Visibility NSR: PSD major stationary sources and major sources in nonattainment areas.

For all major PSD stationary sources:

(1) The State must notify the FLM in writing not more than 30 days after receiving a permit application or advance notification of application from a proposed source that may impact a visibility protection area.

(2) This notification must take place at least 60 days prior to the public hearing on the application and must contain any analysis of the potential impact of the proposed source on visibility.

(3) The State must consider any analysis concerning visibility impairment performed by the FLM and received not more than 30 days after the notification.

(4) If the State does not concur with the FLM's analysis that adverse visibility impairment will result from the proposed source, the State must provide in its notice of public hearing on the application an explanation of its decision or give notice as to where the explanation can be obtained.

(5) The State must have the ability to require a permit applicant to monitor visibility in or around the visibility protection areas.

For major sources in nonattainment areas:

(1) A major source or modification that may impact a visibility protection area must provide a visibility impact analysis.

(2) The State must ensure that the sources' emissions are consistent with the national visibility goal. The State may consider the cost of compliance, the

time for compliance, the energy and non-air quality environmental impacts of compliance, and the useful life of the source.

(3) The State must follow the same procedures outlined in the PSD items 1 through 5 above in conducting nonattainment area visibility reviews.

Items 1 through 5 for major PSD stationary sources, and items 1 through 3 for major sources in nonattainment areas, are the procedural steps in visibility review as defined in 40 CFR 52.27(d) and 52.28 (c) and (d), respectively. (The provisions of 40 CFR 52.27 and 52.28 were proposed in 49 FR 42670 and finalized in 50 FR 28544.)

The Colorado Visibility SIP has incorporated into the NSR section its existing permit requirements for any source locating in an attainment or nonattainment area. The AQCC Regulation No. 3 specifies the standard requirements for any permit application and permit approval.

Section XIV of AQCC Regulation No. 3 requires any emission permit applicant to demonstrate that emissions from the proposed source will not adversely impact visibility in a Class I area. The demonstration must be reviewed by the FLM, and any determination by the FLM must be considered by the APCD in its decision to grant or deny the permit. The permit will be denied for sources proven to cause a potential impact.

The SIP commits to the notification time frame requirements to the FLM. Section XIV allows the APCD to determine independently if there is an adverse impact to visibility in Class I areas, if the FLM fails to make such determination or such determination is in error. The APCD commits to provide an explanation of its decision, should it disagree with the FLM's assessment on a proposed source's impact on visibility, and to give notice as to where that explanation can be obtained.

#### FLM Coordination

Under section 165(d) of the Clean Air Act, the FLM is given an affirmative responsibility to protect air quality related values which includes visibility in Class I areas. The visibility regulations allow the FLM the opportunity to identify visibility impairment and to identify elements for inclusion in monitoring strategies. The FLM must maintain these areas consistent with congressional land use goals.

The State of Colorado has accorded the FLM (through the National Park Service (NPS) and the United States Forest Service (USFS)) opportunities to participate and comment on its Visibility SIP and regulations.

Comments by the NPS and the USFS were considered and incorporated where applicable. The State has committed in the SIP to consult continually with the FLM on the review and implementation of the visibility program. Further, the State recognizes the expertise of the FLM in monitoring and new source applicability analyses for visibility and has agreed to notify the FLM of any advance notification or early consultation with a major new or modifying source prior to the submission of the permit application.

EPA proposed to approve the Colorado Visibility NSR regulations on March 31, 1987 (52 FR 10239). No comments were received.

#### Summary of Action

EPA is approving the revisions to AQCC Regulation No. 3 of the Colorado SIP as they apply to NSR for visibility protection in Class I areas. These regulations will replace the Federal Visibility NSR regulations now in effect in Colorado, except as they apply to categories of sources for which the Colorado NSR and PSD regulations have been disapproved.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 30, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

#### List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Incorporation by reference, Particulate matter, Carbon monoxide, Hydrocarbons.

Authority: 42 U.S.C. 7401-7642.

Date: November 14, 1988.

Lee M. Thomas,  
Administrator.

Part 52 Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

#### PART 52—[AMENDED]

##### Subpart G—Colorado

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.320 is amended by adding paragraph (c)(40) to read as follows:

#### § 52.320 Identification of plan.

\* \* \*

(c) \* \* \*

(40) A revision to the Colorado SIP was submitted by the Governor on May 8, 1986, for Visibility New Source Review.

(i) Incorporation by Reference.

(A) Revision to the Colorado State Implementation Plan regarding Revision to Regulation No. 3, Section XIV was submitted by the Governor on April 18, 1983, and was adopted on March 10, 1983.

(B) Revision to the Colorado State Implementation Plan regarding Revision to Regulation No. 3, Section IV was submitted by the Governor on May 8, 1986, and was adopted on March 20, 1986.

3. Section 52.344 is amended by revising paragraph (b) to read as follows:

#### § 52.344 Visibility protection.

\* \* \*

(b) The Visibility NSR regulations are approved for industrial source categories regulated by the NSR and PSD regulations which have previously been approved by EPA. However, Colorado's NSR and PSD regulations have been disapproved for certain sources as listed in 40 CFR 52.343(a)(1). The provisions of 40 CFR 52.26 and 52.28 are hereby incorporated and made a part of the applicable plan for the State of Colorado for these sources.

[FR Doc. 88-26719 Filed 11-30-88; 8:45 am]

BILLING CODE 6560-50-M

#### 40 CFR Part 52

[FRL-3484-2]

#### Approval and Promulgation of Implementation Plans; Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

**SUMMARY:** By this notice, EPA is approving (1) revised State of Idaho Department of Health and Welfare (IDHW) rules regulating the height of stacks and the use of dispersion techniques, and (2) two administrative rule changes, submitted on March 27, 1987, as revisions to the Idaho state implementation plan (SIP). These revisions clarify and correct portions of the existing rules for stack heights and dispersion techniques and were submitted to satisfy the requirements of section 123 (Stack Heights) of the Clean Air Act (hereinafter the Act).

**EFFECTIVE DATE:** January 3, 1989.

**ADDRESSES:** Copies of the materials submitted to EPA may be examined during normal business hours at:

Air Programs Branch (10A-87-7), Environmental Protection Agency, 1200 Sixth Avenue AT-082, Seattle, Washington 98101.

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

State of Idaho Department of Health and Welfare (IDHW), 450 W. State Street, Statehouse, Boise, Idaho 83720.

**FOR FURTHER INFORMATION CONTACT:** David C. Bray, Air Programs Branch, Environmental Protection Agency, 1200 Sixth Avenue AT-082, Seattle, Washington 98101, Telephone: (206) 442-4253, FTS: 399-4253.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

On March 27, 1987 the State of Idaho Department of Health and Welfare (IDHW) submitted revised rules regulating the use of stack heights and dispersion techniques and two other administrative rule changes as revisions to the Idaho State Implementation Plan (SIP). The revisions to section 16.01.1002.94 "Stack" (definition) and section 16.01.1014 "Stack Heights and Dispersion Techniques," of the Rules and Regulations for Control of Air Pollution in Idaho clarify and correct portions of the existing rules for stack heights and dispersion techniques to comply with revised EPA stack height regulations as promulgated in 40 CFR Part 51. These rules apply to all new sources and modifications in Idaho as required in 40 CFR 51.164, as well as to existing sources as required in 40 CFR 51.118 and apply to all sources that were or are constructed, reconstructed, or modified subsequent to December 31, 1970. EPA has reviewed the revisions to these rules and has determined that the revised rules are consistent with EPA's requirements for stack heights and dispersion techniques regulations as promulgated by EPA on July 8, 1985.

EPA's stack height regulations were challenged in *NRDC v. Thomas*, 838 F.2d 1224 (D.C. Cir. 1988). On January 22, 1988, the U.S. Court of Appeals for the D.C. Circuit issued its decision affirming the regulations in large part, but remanding three provisions to EPA for reconsideration. These are:

1. Grandfathering pre-October 11, 1983 within-formula stack height increases from demonstration requirements (40 CFR 51.100(kk)(2));

2. Dispersion credit for sources originally designed and constructed with

merged or multiflue stacks (40 CFR 51.100(hh)(2)(ii)(A)); and

3. Grandfathering pre-1979 use of the refined H+1.5L formula (40 CFR 51.100(ii)(2)).

The revisions to section 16.01.1009 "Total Compliance," and section 16.01.1201.03 "Visible Emissions—Exception," clarify the applicability of these sections.

On July 1, 1988 (53 FR 24964), EPA proposed to approve the submitted revisions and provided a 30-day public comment period on this proposed approval. No comments were received.

##### **II. Summary of Action**

EPA is today approving of the revised stack heights and dispersion techniques rules as a revision to the Idaho SIP satisfying the requirements of section 123 of the Act, and is approving the administrative rule revisions for "Total Compliance," and "Visible Emissions."

Although EPA is approving IDHW's stack height rules on the grounds that they satisfy 40 CFR Part 51, EPA is also providing notice that this action may be subject to the decision in *NRDC v. Thomas*, 838 F.2d 1224 (D.C. Cir. 1988). If the EPA's response to the *NRDC* remand modifies the July 8, 1985 regulations, EPA will notify the State of Idaho that its rules must be changed to comport with EPA's modified requirements. This may result in revised emission limitations or may affect other actions taken by IDHW and source owners or operators.

##### **III. Administrative Review**

Under 5 U.S.C. § 605(b), I certify this revision will not have a significant economic impact on a substantial number of small entities (46 FR 8709).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 30, 1989. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2)).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

##### **List of Subjects in 40 CFR Part 52**

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by Reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Date: November 17, 1988.

Lee M. Thomas,  
Administrator.

**Note:** Incorporation by reference of the State Implementation Plan for the state of Idaho was approved by the Director of the Federal Register on July 1, 1982.

Title 40, Part 52 of the Code of Federal Regulations is amended as follows:

#### **PART 52—[AMENDED]**

##### **Subpart N—Idaho**

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642

2. Section 52.670 is amended by adding paragraph (c)(25) to read as follows:

##### **§ 52.670 Identification of plan.**

\* \* \*

(c) \* \* \*

(25) On March 27, 1987, the State of Idaho Department of Health and Welfare submitted revised rules regulating the use of stack heights and dispersion techniques (section 16.01.1002.94 and section 16.01.1014) as revisions to the Idaho state implementation plan. Additional revisions included clarifications to section 16.01.1009 (Total Compliance), and section 16.01.1201.03 (Visible Emissions-Exception).

(i) Incorporation by Reference

(A) March 27, 1987 letter from the State of Idaho Department of Health and Welfare to EPA, Region 10.

(B) Section 16.01.1002.94 (Stack), section 16.01.1014 (Stack Heights and Dispersion Techniques), section 16.01.1009 (Total Compliance) and section 16.01.1201.03 (Visible Emissions-Exception) adopted by the State of Idaho Department of Health and Welfare on February 11, 1987.

3. Section 52.679 is revised to read as follows:

##### **§ 52.679 Contents of Idaho State Implementation plan.**

**Implementation Plan for the Control of Air Pollution in the State of Idaho**

Chapter I—Introduction (submitted 1/15/80)

Chapter II—Administration (submitted 1/15/80)

Chapter III—Emissions Inventory (submitted 1/15/80)

Chapter IV—Air Quality Monitoring (submitted 1/15/80, 2/14/80)

Chapter V—Source Surveillance (submitted 1/15/80)

Chapter VI—Emergency Episode Plan (submitted 1/15/80)

Chapter VII—Approval Procedures for New and Modified Facilities (submitted 4/19/85)

## Chapter VIII—Non-Attainment Area Plans

VIII-a—Silver Valley Nonattainment Plan  
(submitted 1/15/80)VIII-b—Lewiston Nonattainment Plan  
(submitted 1/15/80, 12/4/80)VIII-c—Transportation Control Plan for the  
carbon monoxide of Ada County  
(submitted 5/24/84, 1/3/85, and 3/25/85)VIII-d—Pocatello TSP Nonattainment Plan  
(submitted 3/7/80, 2/5/81)VIII-e—Soda Springs Nonattainment Plan  
(submitted 1/15/80)

## Chapter IX—(Reserved)

Chapter X—Plan for Maintenance of National  
Ambient Air Quality Standards for Lead  
(submitted 2/3/84)Appendix A—Legal Authority and Other  
General Administrative Matters  
(submitted 1/15/80)Appendix A.2—Section 39–100, Idaho Code  
(submitted 1/15/80)Appendix A.3—Rules and regulations for  
control of air pollution in Idaho Manual  
(submitted 1/15/80, 4/19/85)1-1000 Legal Authority (submitted 1/15/  
80)

1-1001 Policy (submitted 1/15/80)

1-1002 Definitions (submitted 4/19/85)

1-1002.01 Act

1-1002.02 Actual Emissions

1-1002.03 Adverse Effect on Visibility

1-1002.04 Air Contaminant

1-1002.05 Air Pollution

1-1002.06 Air Quality

1-1002.07 Air Quality Criterion

1-1002.08 Allowable Emissions

1-1002.09 Ambient Air

1-1002.10 Ambient Air Quality Violation

1-1002.11 ASTM

1-1002.12 Attainment Area

1-1002.13 Background Level

1-1002.14 Baseline (Area, Concentration,  
Date)1-1002.15 Base Available Control  
Technology (BACT)

1-1002.16 Board

1-1002.17 Btu

1-1002.18 Collection Efficiency

1-1002.19 Commence Construction or  
Modification

1-1002.20 Complete

1-1002.21 Construction

1-1002.22 Control Equipment

1-1002.23 Controlled Emission

1-1002.24 Criteria Pollutant

1-1002.25 Department

1-1002.26 Designated Facility

1-1002.27 Director

1-1002.28 Emission

1-1002.29 Emission Standard

1-1002.30 Emission Standard Violation

1-1002.31 Emissions Unit

1-1002.32 Equivalent Air-Dried Kraft Pulp

1-1002.33 Existing Stationary Source or  
Facility

1-1002.34 Facility

1-1002.35 Federal Class I Area

1-1002.36 Federal Land Manager

1-1002.37 Fuel-Burning Equipment

1-1002.38 Fugitive Dust

1-1002.39 Fugitive Emissions

1-1002.40 Hazardous Air Pollutant

1-1002.41 Hot-Mix Asphalt Plant

1-1002.42 Incinerator

1-1002.43 Indian Governing Body

1-1002.44 Indian Reservation

1-1002.45 Industrial Process

1-1002.46 Innovative Control Technology

1-1002.47 Integral Vista

1-1002.48 Kraft Pulping

1-1002.49 Lowest Achievable Emission  
Rate (LAER)

1-1002.50 Major Facility

1-1002.51 Major Modification

1-1002.52 Malfunction

1-1002.53 Mandatory Federal Class I Area

1-1002.54 Modification

1-1002.55 Monitoring

1-1002.56 Multiple Chamber Incinerator

1-1002.57 Net Emissions Increase

1-1002.58 New Stationary Source or  
Facility

1-1002.59 Nonattainment Area

1-1002.60 Noncondensables

1-1002.61 Odor

1-1002.62 Opacity

1-1002.63 Open Burning

1-1002.64 Operating Permit

1-1002.65 Particulate Matter

1-1002.66 Permit to Construct

1-1002.67 Person

1-1002.68 Portable Equipment

1-1002.69 ppm (parts per million)

1-1002.70 Primary Ambient Air Quality  
Standard

1-1002.71 Process or Process Equipment

1-1002.72 Process Weight

1-1002.73 Process Weight Rate

1-1002.74 Reasonable Further Progress  
(RFP)

1-1002.75 Salvage Operations

1-1002.76 Secondary Ambient Air Quality  
Standard

1-1002.77 Secondary Emissions

1-1002.78 Significant

1-1002.79 Significant Contribution

1-1002.80 Smoke

1-1002.81 Source

1-1002.82 Source Operation

1-1002.84 Standard Conditions

1-1002.85 Stationary Source

1-1002.86 Time Intervals

1-1002.87 TRS (total reduced sulfur)

1-1002.88 Unclassifiable Area

1-1002.89 Uncontrolled Emission

1-1002.90 Visibility Impairment

1-1002.91 Wigwam Burner

16.01.1002.94 "Stack" (adopted 2/11/87)

1-1003 (Repealed)

1-1005 Reporting (submitted 1/15/80)

1-1006 Upset Conditions, Breakdown  
(submitted 1/15/80)1-1008 Circumvention (submitted 1/15/  
80)16.01.1009 "Total Compliance" (adopted  
2/11/87)1-1010 Sampling and Analytical  
Procedures (submitted 1/15/80)1-1011 Provisions Governing Specific  
Activities (submitted 1/15/80)1-1012 Procedures and Requirements for  
Permits to Construct and Operating  
Permits (submitted 4/19/85)1-1013 Registration Procedures and  
Requirements for Portable Equipment  
(submitted 4/19/85)16.01.1014 "Stack Heights and Dispersion  
Techniques" (adopted 2/11/87)

1-1015—1-1050 (Reserved)

1-1051—1-1055 Air Pollution Emergency  
Regulation (submitted 1/15/80)

1-1056—1-1100 (Reserved)

1-1101 Air Quality Standards and Area  
Classification (submitted 4/19/85)

1-1102—1-1112 (Repealed)

1-1113—1-1150 (Reserved)

1-1151—1-1153 Rules for Control of Open  
Burning (submitted 1/15/80)

1-1154—1-1200 (Reserved)

1-1201 Visible Emissions (submitted 1/  
15/80)16.01.1201.03 "Visible Emissions—  
Exception" (adopted 2/11/87)

1-1202 (Reserved)

1-1203 General Restrictions on Visible  
Emissions From Wigwam Burners  
(submitted 1/15/80)

1-1204—1-1205 (Repealed)

1-1206—1-1250 (Reserved)

1-1251—1-1252 Rules for Control of  
Fugitive Dust (submitted 1/15/80)

1-1253—1-1300 (Reserved)

1-1301 Fuel Burning Equipment—  
Particulate Matter (submitted 1/15/80)

1-1302—1-1304 (Repealed)

1-1305—1-1325 (Reserved)

1-1326 (Repealed)

1-1327 Emission Limitations (submitted  
1/15/80)1-1328 Allowable Rate of Emission Based  
on Process Weight Rate—Table  
(submitted 1/15/80)1-1329 Particulate Matter—New  
Equipment Process Weight Limitations  
(submitted 1/15/80)1-1330 Particulate Matter—Existing  
Equipment Process Weight Limitations  
(submitted 1/15/80)

1-1331—1-1350 (Reserved)

1-1351—1-1355 Rules for Sulfur Content  
of Fuels (submitted 1/15/80)

1-1356—1-1400 (Reserved)

1-1401—1-1402 Rules for Control of  
Fluoride Emissions (submitted 1/15/80)

1-1403—1-1450 (Reserved)

1-1451—1-1452 Rules for Control of  
Odors (submitted 1/15/80)

1-1453—1-1500 (Reserved)

1-1501—1-1504 Rules for Control of  
Incinerators (submitted 1/15/80)

1-1505—1-1550 (Reserved)

1-1551—1-1553 Rules for Control of  
Motor Vehicle Emissions (submitted 1/  
15/80)

1-1554—1-1600 (Reserved)

1-1601—1-1605 Rules for Control of Hot-  
Mix Asphalt Plants (submitted 1/15/80)

1-1606—1-1650 (Reserved)

1-1651—1-1662 Rules For Control of Kraft  
Pulping Mills (submitted 1/15/80)

1-1663—1-1700 (Reserved)

1-1701—1-1704 (Repealed)

1-1705—1-1750 (Reserved)

1-1751—1-1755 Rules for Control of  
Rendering Plants (submitted 1/15/80)

1-1756—1-1800 (Reserved)

1-1801—1-1804 Rules for Control of  
Sulfur Oxide Emissions From Sulfuric  
Acid Plants (submitted 1/15/80)

1-1805—1-1850 (Reserved)

1-1869—1-1899 (Reserved)

1-1900—1-1906 (Repealed)

1-1907—1-1950 (Reserved)

1-1969—1-1999 (Reserved)

Appendix B Emissions Inventory—Ada  
County Carbon Monoxide  
Nonattainment Area (submitted 1/15/80)

Appendix G Permits—Silver Valley  
(submitted 1/15/80)

Appendix H Permits—Lewiston (submitted  
12/4/80, 2/5/81)

Appendix J Permits—Pocatello (submitted  
3/7/80)

Appendix K Permits—Soda Springs  
(submitted 1/15/80)

Baker Industries, 1973 Consent Order (40 CFR  
52.670(c)(15)) — SO<sub>2</sub> Emission Limitation  
(submitted 7/28/75)

40 CFR Part 52, Subparts A and N

[FR Doc. 88-27561 Filed 11-30-88; 8:45 am]

BILLING CODE 6580-50-M

## 40 CFR Part 799

[OPTS-42061E; FRL-3484-7]

### Oleylamine; Final Test Standards and Reporting Requirements

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is issuing a final Phase II test rule under section 4(a) of the Toxic Substances Control Act (TSCA) specifying the test standards and reporting requirements to be used by manufacturers and processors of oleylamine (9-octadecenylamine or ODA; CAS No. 112-90-3). This rule requires that certain TSCA health effects test guidelines be utilized as the test standards for the required studies, and that test data be submitted within specified times.

**DATES:** In accordance with 40 CFR 23.5, this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern ["daylight" or "standard" as appropriate] time on December 15, 1988. This rule shall become effective on January 17, 1989.

**FOR FURTHER INFORMATION CONTACT:** Michael M. Stahl, Acting Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Rm. EB-44, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

**SUPPLEMENTARY INFORMATION:** EPA is promulgating a final Phase II test rule specifying test standards and reporting requirements for ODA. The test standards and reporting requirements are added to 40 CFR 799.3175.

Public reporting burden for this collection of information is estimated to average 535 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including

suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

### I. Background

EPA issued a final Phase I rule under section 4(a) of TSCA published in the *Federal Register* of August 24, 1987 (52 FR 31962), requiring manufacturers and processors to perform developmental toxicity and two-tiered mutagenicity testing of ODA. The need for third tier mutagenicity testing and oncogenicity testing was to be determined by EPA following public program review of all relevant data.

Under the two-phase test rule development process, manufacturers and processors of ODA would normally have been required to submit proposed study plans, including schedules for each of these required tests, in accordance with 40 CFR 790.50. EPA would review the submitted study plans and schedules and issue them, with any necessary modifications, for public comment in a Phase II test rule proposal. After evaluating and responding to public comment, EPA would adopt the study plans in a Phase II final rule as the required test standards and data submission deadlines in accordance with 40 CFR 790.52.

However, in the case of the ODA test rule, which was initiated under the two-phase process, EPA decided to propose the relevant TSCA test guidelines as the test standards for the rule (52 FR 31970; August 24, 1987). EPA also proposed that the data from the required studies be submitted within certain time periods, these time periods serving as the data submission deadlines required by TSCA section 4(b)(1). The reasons for this change in the test rule development process for ODA were discussed in the proposed Phase II rule.

### II. Modifications to the Two-Phase Rulemaking Process

Because EPA proposed certain TSCA guidelines as the test standards and proposed data submission deadlines, persons subject to the Phase I final rule were not required to submit proposed study plans for the required testing or proposed dates for the initiation and completion of this testing. They were, however, required to submit notices of intent to test or exemption applications in accordance with 40 CFR 790.45.

EPA is now promulgating a final Phase II rule requiring manufacturers (including importers) and processors of

ODA who have not been granted exemptions from the rule to conduct testing in accordance with specified test standards and reporting requirements. While EPA has not identified any byproduct manufacturers of ODA, such persons are subject to the requirements of this test rule. These standards and requirements reflect EPA's evaluation of comments received on the proposed rule. Moreover, once this Phase II final rule is promulgated, those persons who have notified EPA of their intent to test must submit study plans (which adhere to the promulgated test standards) no later than 45 days before the initiation of each of the required tests.

### III. Proposed Phase II Test Rule

#### A. Proposed Test Standards

EPA proposed that testing of ODA be conducted using the following TSCA test guidelines as test standards:

1. For specific organ/tissue toxicity under 40 CFR 798.4900 *Developmental toxicity study*.

2. For genetic toxicity: Chromosomal effects—a. First tier under 40 CFR 798.5385 *In vivo mammalian bone marrow cytogenetics tests: Chromosomal analysis*.

b. Second tier under 40 CFR 798.5450 *Rodent dominant lethal assay*.

c. Third tier under 40 CFR 798.5460 *Rodent heritable translocation assay*.

3. For genetic toxicity: Gene mutations—a. First tier under 40 CFR 798.5300 *Detection of gene mutations in somatic cells in culture*.

b. Second tier under 40 CFR 798.5275 *Sex-linked recessive lethal test in Drosophila melanogaster*.

c. Third tier under 40 CFR 798.5200 *Mouse visible specific locus test* (see Unit V.A.3. of this preamble).

4. For chronic exposure under 40 CFR 798.3300 *Oncogenicity*.

EPA believes that the TSCA Health Effects Test Guidelines cited in Unit III.A., if properly followed, will produce adequate and reliable data.

#### B. Proposed Reporting Requirements

EPA proposed that all data developed under this rule be conducted and reported in accordance with its TSCA Good Laboratory Practice (GLP) standards which appear at 40 CFR Part 792, and that test sponsors submit individual study plans at least 45 days prior to the initiation of each study.

EPA is required by section 4(b)(1)(c) of TSCA to specify the time period during which persons subject to a test rule must submit test data. EPA proposed that interim progress reports be provided at 6-month intervals

beginning 6 months after the effective date of the final test rule or notification that testing should be initiated. EPA proposed specific reporting requirements for each of the proposed test standards as follows:

That the developmental toxicity study be conducted and the final results submitted to EPA within 12 months of the effective date of the final test rule.

That the mutagenicity studies be conducted, and the final results submitted to EPA as follows:

1. *In vivo* mammalian bone marrow cytogenetics test and detection of gene mutations in somatic cells in culture within 8 months of the effective date of the final rule.

2. Rodent dominant lethal assay and sex-linked recessive lethal test in *Drosophila melanogaster* within 17 months of the effective date of the final rule.

3. Rodent heritable translocation assays within 24 months of EPA's notification of the test sponsor by certified letter or Federal Register notice that testing should be initiated.

4. Mouse visible specific locus test within 48 months of EPA's notification of the test sponsor by certified letter or Federal Register notice that testing should be initiated.

That oncogenicity testing be conducted and the final results submitted within 53 months of EPA's notification of the test sponsor by certified letter or Federal Register notice that testing should be initiated.

As required by TSCA section 4(d), EPA plans to publish in the Federal Register a notice of the receipt of any test data submitted under this test rule within 15 days of receipt of that data. Except as otherwise provided in TSCA section 14, such data will be made available for examination by any person.

#### IV. Response to Public Comment

EPA received written comments from the Oleylamine Program Panel of the Chemical Manufacturers Association (the Panel) in response to the proposed test standards and reporting requirements for oleylamine on October 8, 1987 (Ref. 1). The Panel was composed of four ODA manufacturers, Akzo Chemie America, Humko Chemicals, Jetco Chemical Company, and Sherex Chemical Company, and one processor, Ethyl Corporation. The Panel also requested a public meeting to give oral comments; the meeting was held on November 16, 1987 (Ref. 2). An additional submission to clarify issues discussed at the EPA public meeting was submitted to EPA by the Panel on January 6, 1988 (Ref. 3). A summary of

the Panel's comments and EPA's responses follows.

##### *A. Route of Administration for Developmental Toxicity Study*

1. *Comment:* The Panel believes the dietary route should not be used because the Panel found through an animal feed stability study it conducted that only 50 percent of ODA is available in rat chow after 24 hours.

*Response:* EPA agrees with this comment; thus the route of administration shall now be oral by gavage for the developmental toxicity test, the *in vivo* mammalian bone marrow cytogenetic tests—chromosomal analysis, rodent dominant lethal assay, rodent heritable translocation assay, and the oncogenicity test.

2. *Comment:* The gavage route is inappropriate because the bolus effect is different from a mechanics' slow dermal exposure.

*Response:* EPA disagrees. Although gavage gives a bolus dose, it is an accepted method to measure the developmental toxicity of chemicals and will measure the intrinsic capacity of ODA to cause developmental toxicity. Dermal exposure is inappropriate because of the highly corrosive nature of ODA as discussed in the final Phase I rule (52 FR 31962; August 24, 1987).

3. *Comment:* An adequate data base is available to interpret developmental toxicity effects via the dermal route.

*Response:* EPA disagrees because there is a very limited data base on developmental toxicity studies conducted via the dermal route from which background information can be drawn for these studies. Also, those chemicals that have been tested by the dermal route were, for the most part, first tested by the oral route and then tested dermally. Consistent with these tests, EPA would agree to dermal developmental toxicity testing of ODA if an oral developmental toxicity test were done first.

The Panel provided a bibliography of articles to support its contention that there was an adequate data base available to interpret developmental toxicity effects via the dermal route. The Panel's submission included no analysis of this bibliography. In fact, about one-half of the articles were inappropriate to address this question (e.g., frog and chicken embryo studies). The Panel has not provided any analysis or rational argument to support its thesis. Thus, EPA requires that a developmental toxicity study be conducted with ODA via the oral gavage route of exposure.

4. *Comment:* Developmental toxicity effects are different with oral and dermal applications.

*Response:* A developmental toxicity study is designed to ensure that a chemical being tested is administered at a high enough dose to get to the target system. One then determines if the chemical, on the basis of conditions of exposure with consideration of maternal effects, has the potential to produce an adverse effect. Because of the high corrosive nature of ODA, a dermal study may not allow a sufficient dose to reach the target system. Therefore, EPA is requiring that the route of exposure for the developmental toxicity study be oral by gavage.

5. *Comment:* CMA refuted EPA's assertion that a dermal developmental toxicity study on ODA may result in positive effects due solely to stress from the dermal irritating properties of ODA by citing a study in which three dermal irritating chemicals did not cause developmental toxicity. CMA therefore felt that the dermal route of administration of ODA would be acceptable.

*Response:* Although there may be compounds that cause dermal irritation in adult animals but no developmental toxicity whatsoever, EPA believes that ODA's strong dermal irritation properties are likely to stress the test animals and that it is prudent to minimize this confounding factor in a developmental toxicity study. Therefore, EPA is requiring that the route of administration of ODA be oral by gavage in the developmental toxicity study.

6. *Comment:* The Panel believes that sufficient ODA will penetrate to the target organ via the dermal route.

*Response:* EPA disagrees. In the absence of hard data to prove the Panel's point, EPA continues to believe, on the basis of the available data, that because severe irritation will limit the amount of ODA that can be applied to the skin, sufficient ODA will not penetrate the skin to allow for the proper design of the developmental toxicity study, i.e. high dose causing maternal toxicity. In the absence of adequate dermal absorption data (kinetic data), EPA cannot predict what the target organ concentrations of ODA will be.

7. *Comment:* The Panel wants to first conduct the dermal developmental toxicity test with ODA at a level below skin breakdown or obstruction (sic) in rats, and in rabbits whose skin is more permeable than human skin. At this level the maximum tolerated dose (MTD) is expected to approximate maximum use levels in lubricants.

*Response:* EPA disagrees. Available data indicate that ODA is such a strong

dermal irritant that the animal dose will be below the anticipated human exposure level. This will not provide an adequate margin of exposure between animal and human exposure levels.

#### B. Oral/Dermal Pharmacokinetics

**Comment:** EPA stated that it planned to propose an oral/dermal pharmacokinetics study on ODA in its final Phase I rule (52 FR 31962; August 24, 1987). The Panel commented that it felt that such a study would not give reliable comparative results.

**Response:** EPA is reviewing the need for this study. If EPA determines that such a study is necessary, a separate notice of proposed rulemaking for the comparative oral/dermal pharmacokinetics of ODA will be published in the *Federal Register*.

#### C. Oncogenicity Testing

**Comment:** EPA should specify that oncogenicity testing will not be required until an updated economic impact analysis is completed and considered as part of the program review for such testing.

**Response:** EPA will consider the need for an updated economic impact analysis at the time of the public program review.

#### D. Reporting Requirements

**Comment:** The time for testing is inadequate, and moreover should begin on the effective date of the final Phase II rule, rather than the final Phase I rule published on August 24, 1987.

**Response:** EPA agrees that the time for testing shall be based on the effective date of the final Phase II rule. EPA also believes that the proposed reporting deadlines finalized in this final Phase II rule provide adequate time for completing the testing and submitting final reports for the developmental toxicity and oncogenicity tests. EPA notes that it has extended the reporting deadlines originally proposed for the mutagenicity tests.

### V. Final Phase II Test Rule

#### A. Test Standards

The first, second, and third tier mutagenicity, developmental toxicity, and oncogenicity test guidelines and chemical-specific modifications proposed for ODA (52 FR 31970; August 24, 1987) shall be the test standards for the testing of ODA under 40 CFR 799.3175 with the following exceptions:

1. *Developmental toxicity study.* EPA is requiring the oral route of administration by gavage for developmental toxicity testing of ODA.

2. *In vivo mammalian bone marrow cytogenetics test, rodent dominant*

*lethal assay, and rodent heritable translocation assays.* The oral route by gavage shall be used to maintain consistency among the tests for ODA test rules and provides an opportunity for public comment. If EPA concludes that third tier mutagenicity testing is still appropriate for ODA, EPA would amend the final test rule for ODA to add this requirement with any appropriate modifications.

3. *Mouse visible specific locus test.* EPA proposed a tiered testing approach to evaluate whether ODA elicits heritable gene mutations. Positive results in certain lower-tier tests would trigger the requirement for conducting a mouse visible specific locus (MVSL) test. EPA believes that the MVSL is necessary, when certain lower-tier tests are positive, to establish definitively whether a substance is capable of eliciting heritable gene mutations. Under the proposed approach, EPA would consider any positive lower-tier test results in a public program review, together with other relevant information, during which interested persons would be able to give their views to EPA. If, after the review, EPA determined that the MVSL was still appropriate, EPA would notify the test sponsors by letter or *Federal Register* notice that they must conduct the test. If EPA determines that the test is no longer necessary, EPA would propose to amend the rule to delete the test requirement.

The final test rule for ODA includes requirements to conduct the lower-tier tests for gene mutations. However, EPA is not promulgating the Phase II requirement for the MVSL for ODA at this time. EPA had based its proposal to require the MVSL, in part, on certain information and assumptions about the cost of conducting the test and the availability of laboratories able to perform the test. The information and assumptions have since proven to be incorrect. Accordingly, EPA is reexamining this information as it applies to the MVSL requirement for this test rule as well as those for other chemical substances. In particular, EPA is reviewing whether any laboratories are available to perform the MVSL for industry in accordance with the TSCA GLP Standards at 40 CFR Part 792, and the cost of such testing. EPA is also reviewing possible alternative tests to the MVSL as well as modifications of the MVSL for which costs may be lower or laboratory availability may be more certain.

Once EPA completes its evaluation of this additional information, EPA will publish a notice in the *Federal Register* concerning the MVSL for ODA and other substances subject to TSCA

section 4 test rules. This notice would provide up-to-date information on the cost of MVSL testing, availability of laboratories to perform the MVSL, and possible alternative tests to the MVSL or modifications of the MVSL together with their costs and laboratory availability. The notice would also address EPA's intentions about how any changes to the MVSL requirements would apply to the various test rules and would provide an opportunity for public comment. If EPA concludes that the MVSL is still appropriate for ODA, EPA will amend the final test rule for ODA to add the MVSL requirements with any appropriate modifications.

4. *Oncogenicity bioassay.* The oral route of administration by gavage is required.

#### B. Reporting Requirements

All data developed under this rule shall be reported in accordance with the TSCA GLP Standards (40 CFR Part 792). In addition, test sponsors shall submit individual study plans at least 45 days prior to the initiation of each study in accordance with 40 CFR Part 790.

EPA is required by TSCA section 4(b)(1)(C) to specify the time period during which persons subject to a test rule must submit test data. On the basis of EPA's regulatory experience with the health effects tests required for ODA, as well as in response to public comments, EPA is adopting reporting requirements as follows. Results for the required tests shall be reported as specified in the proposed rule for the developmental toxicity and oncogenicity tests. EPA has extended the reporting deadline as originally proposed for the mutagenicity tests. (See Unit III.B. of this preamble). In addition, the rodent heritable translocation assay and oncogenicity test data shall be submitted within the time specified after notification. The following table shows the reporting requirements for ODA:

TABLE—REPORTING REQUIREMENTS FOR ODA

Test	Reporting deadline for final report (months after the effective date of final phase II rule, except as indicated)	Number of interim (6-month) reports required
Developmental toxicity...	12	1
Gene mutation cells in culture assay .....	10	1

TABLE—REPORTING REQUIREMENTS FOR ODA—Continued

Test	Reporting deadline for final report (months after the effective date of final phase II rule, except as indicated)	Number of interim (6-month) reports required
Sex-linked recessive lethal test in <i>Drosophila melanogaster</i> .....	22	3
<i>In vivo</i> cytogenetics test.....	14	2
Rodent dominant lethal test.....	26	4
Rodent heritable translocation assay.....	<sup>1</sup> 25	4
Oncogenicity.....	<sup>1</sup> 53	8

<sup>1</sup> Figure indicates the reporting deadline, in months, calculated from the date of notification of the test sponsor by certified letter **Federal Register** notice that, following public program review of all of the then existing data for ODA, EPA has determined that the required testing must be performed.

TSCA section 14(b) governs EPA disclosure of all test data submitted pursuant to section 4 of TSCA. Upon receipt of data required by this rule, EPA will publish a notice of receipt in the **Federal Register** as required by TSCA section 4(d).

#### C. Conditional Exemptions Granted

The test rule development and exemption procedures (40 CFR 790.87) indicate that, when certain conditions are met, exemption applicants will be notified by certified mail or in the final Phase II test rule for a given substance that they have received conditional exemptions from test rule requirements. The exemptions granted are conditional because they are based on the assumption that the test sponsors will complete the required testing according to the test standards and reporting requirements established in the final Phase II test rule for the given substance. TSCA section 4(c)(4)(B) provides that if an exemption is granted prospectively (that is, on the basis that one or more persons are developing test data, rather than on the basis of prior test data submissions), EPA must terminate the exemption if any test sponsor has not complied with the test rule.

Since the Oleylamine Program Panel of the Chemical Manufacturers Association has indicated to EPA by letter of intent (Ref. 5) its agreement to sponsor all of the tests required for ODA in the final Phase I test rule for ODA (52 FR 31962; August 24, 1987) according to the test standards and reporting requirements established in this final

Phase II test rule for ODA, EPA is hereby granting conditional exemptions to all exemption applicants for all of the testing required for ODA in 40 CFR 799.3175.

#### D. Judicial Review

The promulgation date for the ODA Phase I final rule was established as 1 p.m. eastern daylight time on September 7, 1987 (52 FR 31962; August 24, 1987). To EPA's knowledge, no petitions for judicial review were filed. Any petition for review of this final rule will be limited to a review of the test standards and reporting requirements for ODA established in this final Phase II rule.

#### E. Other Provisions

Section 4 findings, required testing, test substance specifications, persons required to test, enforcement provisions, and the economic analysis are presented in the final Phase I rule for ODA (52 FR 31962; August 24, 1987).

#### VI. Rulemaking Record

EPA has established a record for this rulemaking [docket number OPTS-42061E]. In addition to the documentation listed in the final Phase I rule, this record includes basic information considered by EPA in developing this final rule, including:

##### A. Supporting Documentation

(1) **Federal Register** notices pertaining to this final rule consisting of:

(a) Phase I final rule on ODA (52 FR 31962; August 24, 1987).

(b) Notice of Proposed Phase II rule on ODA (52 FR 31970; August 24, 1987).

(c) TSCA test guidelines final rule (40 CFR Parts 796, 797, and 798; September 27, 1985) and modifications (52 FR 19056; May 20, 1987).

(2) Support documents consisting of the economic impact analysis of the final test rule for ODA.

(3) Communications consisting of:

(a) Written public comments.

(b) Summaries of phone conversations.

##### B. References

(1) CMA. Comments in response to proposed test standards for oleylamine submitted to the Environmental Protection Agency, Washington, DC, by the Oleylamine Program Panel of the Chemical Manufacturers Association, Washington, DC (October 8, 1987).

(2) Transcript of proceedings before the Environmental Protection Agency in the matter of test rule development meeting on oleylamine. Heritage Reporting Corporation, Official Reporters, 1220 L Street NW., Washington, DC (November 18, 1987).

(3) Letter to Robert Sanford, Office of Pesticides and Toxic Substances,

Environmental Protection Agency, Washington, DC, from Has Shah, Chemical Manufacturers Association, Washington, DC. Clarification of issues discussed at EPA public hearing on oleylamine test rule and proposed test standards on November 16, 1987 (January 6, 1988).

(4) CMA. Chemical Manufacturers Association, 2510 M Street NW., Washington, DC 20037. CHO/HGPRT Mutation Assay in the Presence and Absence of Exogenous Metabolic Activation (1985).

(5) Letter to document control officer, TSCA Public Information Office, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Washington, DC, from Geraldine V. Cox, Chemical Manufacturers Association, Washington, DC. Letter of intent to conduct testing of oleylamine by the Oleylamine Program Panel of the Chemical Manufacturers Association (October 26, 1987).

Confidential Business Information (CBI), while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. NE-G004, 401 M Street SW., Washington, DC 20460.

#### VII. Other Regulatory Requirements

##### A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. This test rule is not major because it does not meet any of the criteria set forth in section 1(b) of the Order. The economic analysis of the testing of ODA is discussed in the Phase I test rule (52 FR 31962; August 24, 1987).

This final Phase II test rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments received from OMB, together with any EPA response to these comments, are included in the public record for this rulemaking.

##### B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (15 U.S.C. 601 *et seq.*, Pub. L. 96-354, September 19, 1980), EPA is certifying that this test rule will not have a significant impact on a substantial number of small businesses for the following reasons:

1. There are no small manufacturers of this chemical.
2. Small processors are not expected to perform testing themselves, or

participate in the organization of the testing effort.

3. Small processors will experience only very minor costs, if any, in securing exemption from testing requirements.

4. Small processors are unlikely to be affected by reimbursement requirements.

#### C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control number 2070-0033.

Public reporting burden for this collection of information is estimated to average 535 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

#### List of Subjects in 40 CFR Part 799

Testing, Environmental protection, Hazardous substances, Chemicals, Reporting and recordkeeping requirements.

Dated: November 18, 1988.

Susan F. Vogt,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR Part 799 is amended as follows:

#### PART 799—[AMENDED]

a. The authority citation for Part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

b. Section 799.3175 is amended by adding paragraphs (c)(1) (ii) and (iii); (2) (ii) and (iii); (3) (ii) and (iii); and (4) (ii) and (iii), and (d) to read as follows:

#### § 799.3175 Oleylamine.

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(ii) *Test standard.* (A) The developmental toxicity study shall be conducted with ODA in accordance with § 798.4900 of this chapter except

the provisions of paragraphs (e) (1)(i) and (5) of § 798.4900.

(B) For purposes of this section, the following provisions also apply:

(1) *Species and strain.* The rat and rabbit shall be the test species. The strain shall not have low fecundity and shall preferably be characterized for its sensitivity to developmental toxins.

(2) *Administration of the test substance.* The route of administration shall be oral by gavage. The test substance shall be administered at approximately the same time each day.

(iii) *Reporting requirements.* (A) The developmental toxicity testing shall be completed and the final report submitted to EPA within 12 months of the date specified in paragraph (d)(1) of this section.

(B) An interim progress report shall be provided to EPA 6 months after the date specified in paragraph (d)(1) of this section.

(2) \* \* \*

(ii) *Test standard.* (A)(1) The *in vivo* mammalian bone marrow cytogenetics test: Chromosomal analysis shall be conducted with ODA in accordance with § 798.5385 of this chapter except the provisions of paragraphs (d) (3)(i) and (5)(iii) of § 798.5385.

(2) For purposes of this section, the following provisions also apply.

(i) *Species and strain.* Mice shall be used.

(ii) *Route of administration.* The route of exposure shall be oral by gavage.

(B)(1) The rodent dominant lethal assay shall be conducted with ODA in accordance with § 798.5450 of this chapter except the provisions of paragraphs (d) (3)(i) and (5)(iii) of § 798.5450.

(2) For purposes of this section, the following provisions also apply:

(i) *Species.* Mice shall be used as the test species. Strains with low background dominant lethality, high pregnancy frequency, and high implant numbers are recommended.

(ii) *Route of administration.* The route of administration shall be oral by gavage.

(C)(1) The rodent heritable translocation assay shall be conducted with ODA in accordance with § 798.5460 of this chapter, except for the provisions of paragraphs (d) (3)(i) and (5)(iii) of § 798.5460.

(2) For purposes of this section, the following provisions also apply.

(i) *Species.* Mice shall be used as the test species.

(ii) *Route of administration.* The route of administration shall be oral by gavage.

(iii) *Reporting requirements.* (A) The chromosomal aberration tests shall be

completed and the final reports submitted to EPA as follows:

(1) The *in vivo* mammalian bone marrow cytogenetics test shall be completed within 14 months of the date specified in paragraph (d)(1) of this section.

(2) The rodent dominant lethal assay (if required) shall be completed within 26 months of the date specified in paragraph (d)(1) of this section.

(3) The rodent heritable translocation assay shall be completed (if required) within 25 months of EPA's notification of the test sponsor by certified letter or Federal Register notice under paragraph (c)(2)(i)(C) of this section that testing should be initiated.

(B) Interim progress reports shall be provided to EPA at 6-month intervals for each test beginning 6 months after the date specified in paragraph (d)(1) of this section or notification that testing should be initiated under paragraph (c)(2)(i)(C) of this section, until submission of the final report.

(3) \* \* \*

(ii) *Test standard.* (A) (1) The detection of gene mutations in somatic cells in culture shall be conducted with ODA in accordance with § 798.5300 of this chapter, except for the provisions of paragraphs (d)(3) (i), (ii) and (4) of § 798.5300.

(2) For purposes of this section, the following provisions also apply:

(i) *Types of cells used in the assay.* ODA shall be tested in L5178Y mouse lymphoma cells. Cells should be checked for *Mycoplasma* contamination and may be periodically checked for karyotype stability.

(ii) *Cell growth and maintenance.* Alternative dosing procedures consisting of suspension cultures or roller-bottle incubation shall be used. Appropriate incubation conditions (CO<sub>2</sub> concentrations, temperature, and humidity) shall be used.

(iii) *Metabolic activation.* The metabolic activation system shall be derived from the postmitochondrial fraction (S-9) of livers from rats pretreated with Aroclor 1254. Cells shall be exposed to test substance both in the presence and absence of an appropriate metabolic activation system.

(B) (1) The sex-linked recessive lethal test in *Drosophila melanogaster* shall be conducted with ODA in accordance with § 798.5275 of this chapter except for the provisions of paragraph (d)(5)(iii) of § 798.5275.

(2) For purposes of this section, the following provisions also apply:

(i) *Route of administration.* The route of administration shall be oral.

(ii) Reserved.

(iii) *Reporting requirements* (A) Gene mutation tests shall be completed and the final reports submitted to EPA as follows:

(1) The detection of gene mutations in somatic cells in culture shall be completed within 10 months of the date specified in paragraph (d)(1) of this section.

(2) The sex-linked recessive lethal test in *Drosophila melanogaster* (if required) shall be completed within 22 months of the date specified in paragraph (d)(1) of this section.

(B) Interim progress reports shall be provided to EPA at 6-month intervals for each test beginning 6 months after the date specified in paragraph (d)(1) of this section until submission of the final report.

(4) \* \* \*

(ii) *Test standard.* (A)(1) The oncogenicity bioassay shall be conducted with ODA in accordance with § 798.3300 of this chapter, except for the provisions of paragraphs (b)(1)(i) and (6) of § 798.3300.

(2) For purposes of this section, the following provisions also apply:

(i) *Species and strain.* ODA shall be tested in both rats and mice. Commonly used laboratory strains shall be employed.

(ii) *Administration of the test substance.* The route of administration shall be oral by gavage.

(iii) *Reporting requirements.* (A) The oncogenicity bioassay shall be completed and the final report submitted to EPA within 53 months of EPA's notification of the test sponsor by certified letter or Federal Register notice under paragraph (c)(4)(i) of this section that testing should be initiated.

(B) Interim progress reports shall be provided at 6-month intervals beginning 6 months after the notification under paragraph (c)(4)(i) of this section until submission of the final report.

(d) *Effective dates.* (1) Section 799.3175 is effective October 7, 1987 except for paragraphs (c)(1) (ii) and (iii); (2) (ii) and (iii); (3) (ii) and (iii); (4) (ii) and (iii), and (d) which are effective on January 17, 1989.

(2) The guidelines and other test methods cited in this section are referenced here as they exist on January 17, 1989.

[FR Doc. 88-27661 Filed 11-30-88; 8:45 am]

BILLING CODE 6560-50-M

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### 49 CFR Part 225

[Docket No. RAR-2, Notice No. 9]

#### Adjustment of Monetary Threshold for Reporting Accidents/Incidents

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** This rule increases the reporting threshold from \$5,200 to \$5,700 for railroad accidents/incidents involving property damage that occur during the calendar years 1989 and 1990. This action is needed to ensure that the FRA reporting requirements reflect the impact of inflation since the reporting threshold was last computed in 1986.

**EFFECTIVE DATE:** This rule becomes effective on January 1, 1989.

#### FOR FURTHER INFORMATION CONTACT:

(1) *Principal Program Person:* Gloria D. Swanson, Office of Safety, (RRS-21), FRA, Washington, DC 20590. Telephone (202) 366-0538.

(2) *Principal Attorney:* Billie Stultz, Office of Chief Counsel, (RCC-30), FRA, Washington, DC 20590. Telephone (202) 366-0635.

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 225.19(c) of Title 49, Code of Federal Regulations, provides that the dollar figure that constitutes the reporting threshold for railroad accidents/incidents will be adjusted every two years, in accordance with the procedures outlined in Appendix A to Part 225, to reflect cost increases.

##### New Reporting Threshold

Two years have passed since the accident/incident reporting threshold was last revised. Consequently, FRA has recomputed the threshold, as required by § 225.19(c), based on increased costs for labor and material. FRA has determined that the current reporting threshold of \$5,200 should be increased to \$5,700, and §§ 225.5 and 225.19 are being amended accordingly. Appendix A has also been amended to reflect the most recent calculations and the procedures used to determine the new threshold.

##### Environmental Impact

FRA has evaluated this rule in accordance with its procedures for ensuring full consideration of the potential environmental impacts of FRA

actions, as required by the National Environmental Policy Act and related directives. This notice meets the criteria that establish this as a non-major action for environmental purposes.

#### Executive Order 12291 and Department of Transportation Regulatory Policies and Procedures

This rule has been evaluated in accordance with existing regulatory policies and procedures. It does not constitute a major rule under Executive Order 12291 and does not constitute a significant rule under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). This rule will not have any significant direct or indirect economic impact on any entity because it does not place any new requirements or burdens on the public. For these reasons, a draft regulatory evaluation has not been prepared.

#### Regulatory Flexibility Act

FRA certifies that this rule will not have a significant impact on a substantial number of small entities. There are no direct or indirect economic impacts for small units of government, businesses, or other organizations. State rail agencies remain free to participate in the administration of FRA's rules, but are not required to do so.

#### Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

#### Paperwork Reduction Act

No additional public reporting burden is imposed by this rule; therefore, a Paperwork Reduction Act analysis is not necessary.

#### Notice and Public Procedure

Since the amendment merely adjusts the reporting threshold for accidents/incidents in accordance with procedures specified in long-standing regulation (49 CFR 225.19) and imposes no additional burden on any person, FRA concludes that notice and public procedure are not necessary.

#### List of Subjects in 49 CFR Part 225

Railroad safety, Railroad accident reporting rules.

For reasons set out in the preamble, Part 225 of Chapter II of Title 49 of the

Code of Federal Regulations is amended as follows:

#### PART 225—[AMENDED]

The authority citation for Part 225 continues to read as follows (see 53 FR 28594, 28601):

**Authority:** 45 U.S.C. 38, 42, and 43, as amended; 45 U.S.C. 431, 437, and 438, as amended; Pub. L. 100-342; and 49 CFR 1.49 (c) and (m).

1. By revising § 225.5(b)(2) and republishing the introductory text of the section and of paragraph (b) to read as follows:

#### § 225.5 Definitions.

As used in this part—

\* \* \* \* \*

(b) "Accident/Incident" means:

\* \* \* \* \*

(2) Any collision, derailment, fire, explosion, act of God, or other event involving operation of railroad on-track equipment (standing or moving) that results in more than \$5,700 in damages to railroad on-track equipment, signals, track, track structures, and roadbed;

\* \* \* \* \*

2. By revising the second sentence in § 225.19(b) and by revising the first, third and fifth sentences of § 225.19(c) to read as follows:

(b) *Group I—Rail-Highway Grade Crossing.* \* \* \* In addition, whenever a rail-highway grade crossing accident/incident results in more than \$5,700 damages to railroad on-track equipment, signals, track, track structures, or roadbed, that accident/incident must be reported to the FRA on Form FRA F6180.54. \* \* \*

(c) *Group II—Rail Equipment.* Rail equipment accidents/incidents are collisions, derailments, fires, explosions, acts of God, or other events involving the operation of railroad on-track equipment (standing or moving) that result in more than \$5,700 in damages to railroad on-track equipment, signals, track, track structures, or roadbed, including labor costs and all other costs for repairs or replacement in kind. \* \* \* If the property of more than one railroad is involved in an accident/incident, the \$5,700 threshold is calculated by including the damages suffered by all of the railroads involved. \* \* \* The \$5,700 reporting threshold will be revised periodically and will be adjusted in increments of \$100 every 2 years in accordance with the procedures outlined in Appendix A of this part.

\* \* \* \* \*

3. By revising Appendix A to read as follows:

#### Appendix A—Procedure for Determining Reporting Threshold

1. Wage figures used for track direct labor rates will be based on the "Average straight time rate" shown in the "Recapitulation by Group of Employees," for Group 300 Maintenance of Way Structures Employees. This information appears in the most recent annual edition (Year 1987) of "Statement A300 of the Interstate Commerce Commission, Bureau of Accounts, Wage Statistics of Class I Railroads in the United States."

2. Wage figures used for mechanical direct labor rates will be based on the "Average straight time rate" shown in the "Recapitulation by Group of Employees," for Group 400 Maintenance of Way Structures Employees. This information appears in the most recent annual edition (Year 1987) of "Statement A300 of the Interstate Commerce Commission, Bureau of Accounts, Wage Statistics of Class I Railroads in the United States."

3. Fringe benefit surcharges will be added to the average straight time rates for mechanical and track employees based on the Railroad Cost Index data developed for the Interstate Commerce Commission under the provisions of 49 CFR Part 1102. This information was published in summarized form in the September 24, 1984 edition of the *Federal Register* (49 FR 37481).

4. To calculate the index number for mechanical labor, divide the present (1988) mechanical wage rate of \$21.82 by the previous (1986) mechanical wage rate of \$20.48. The result is a mechanical labor index number of 1.07 for 1988.

5. The track labor index number is calculated by dividing the present (1988) track wage rate of \$21.12 by the previous (1986) track wage rate of \$19.23. The result is a track labor index number of 1.1 for 1988.

6. Calculation of the labor index number is as follows: [(track labor index number) 1.1 x .20] + [(mechanical labor index number) 1.07 x .80] = labor index number of 1.08.

7. The mechanical material index number is calculated by first totaling the present (1988) cost of the following mechanical materials:

Quantity	Description	1986	1988
8.....	33" CS wheels.....	\$1,940	\$1,682
8.....	6 by 11" roller bearings.....	1,235	1,204
4.....	Roller bearing axles.....	1,946	2,030
4.....	6 by 11" roller bearing truck sides (750 lbs.).....	3,397	3,027
2.....	6 by 11" truck bolsters (1,060 lbs.).....	2,532	2,092
2.....	E couplers.....	534	589
4.....	Brake beams.....	339	321
1.....	AB cylinder.....	95	95
1.....	AB reservoir.....	299	342
1.....	ABD control valve.....	1,250	1,252
500 lbs.....	Steel bar.....	500	610
1,000 lbs.....	Steel sheets.....	1,000	1,220
1,000 lbs.....	Steel plates.....	1,000	1,220
8.....	Brake shoes.....	58	46

Quantity	Description	1986	1988
8.....	Roller bearing adapters.....	140	131
24.....	Outer coil springs.....	174	192
800.....	Board feet hardwood lumber.....	376	392
1.....	Traction motor.....	36,500	43,000
60 feet.....	1 1/4" brake pipe.....	66	72
1.....	Hand brake.....	245	256
	Total mechanical.....	53,626	59,773

The mechanical material index number is determined by dividing the present (1988) total cost for these mechanical materials (\$59,773) by the previous (1986) total cost for mechanical materials (\$53,626). The result is 1.11.

8. The track material index number is calculated by first totaling the present (1988) cost of the following track materials:

Quantity	Description	1986	1988
4,500.....	Ties, wooden.....	\$99,000	\$112,500
250 tons.....	Rail.....	140,000	145,000
90 tons.....	Tie plates.....	50,400	52,200
27,000.....	Spikes (5.8 tons).....	4,408	4,408
800.....	Joint bars (25.4 tons).....	24,000	27,000
2,000.....	Track bolts.....	3,000	3,200
1.....	Frog.....	4,300	4,500
1.....	Switch.....	4,000	4,900
	Total track material.....	329,108	353,708

The track material index number is determined by dividing the present (1988) total cost for these track materials (\$353,708) by the previous (1986) total cost for track materials (\$329,108). The result is 1.07.

9. Calculation of the material index number is as follows: [(track material index number) 1.07 x .20] + [(mechanical material index number) 1.11 x .80] = material index number of 1.10.

10. Calculation of the threshold index number is as follows: [(labor index number) 1.08 x .40] + [(material index number) 1.10 x .60] = threshold index number of 1.09.

11. In order to calculate the new reporting threshold, multiply the existing reporting threshold \$5,200 by the threshold index number of 1.09. The result is \$5,668. This result, when rounded to the nearest \$100.00 is the new accident/incident reporting threshold figure of \$5,700.

Issued in Washington, DC on November 23, 1988.

John H. Riley,  
Administrator.

[FR Doc. 88-27554 Filed 11-30-88; 8:45 am]

BILLING CODE 4910-06-M

**VETERANS ADMINISTRATION****38 CFR Part 21****Veterans Education; Veterans' Benefits and Services Act of 1988 and the Vietnam Era GI Bill****AGENCY:** Veterans Administration.**ACTION:** Final regulations.

**SUMMARY:** The Veterans' Benefits and Services Act of 1988 contains a provision which changes the method of measuring laboratory sessions for the purpose of paying educational benefits. The definition of standard class session is also changed. This final rule brings the pertinent Veterans Administration (VA) regulations governing the Vietnam Era GI Bill into agreement with the law.

**EFFECTIVE DATE:** May 20, 1988.

**FOR FURTHER INFORMATION CONTACT:** June C. Schaeffer (225), Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2092.

**SUPPLEMENTARY INFORMATION:** Amendments are made to 38 CFR 21.4200 and 21.4270. These amendments are required by section 321 of the Veterans' Benefits and Services Act of 1988 (Pub. L. 100-322). That section provides a new definition of a standard class session. The regulations affected by the new provision of law are amended to agree with it.

This law contains numerous provisions which will require changes to VA regulations. These amended regulations are limited to those which are needed to implement the section of law which affects the Vietnam Era GI Bill.

The VA has determined that these amended regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a \$100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans Affairs has certified that these amended regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act

(RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the regulations affect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The VA finds that good cause exists for making the amendments to these regulations, like the section of the law they implement, retroactively effective on May 20, 1988. To achieve the maximum benefit of this legislation for the affected individuals it is necessary to implement these provisions of law as soon as possible. A delayed effective date would be contrary to statutory design; would complicate administration of these provisions of law; and might result in denial of benefits to a veteran who is otherwise entitled to them.

The VA also finds that good cause exists for publishing these amended regulations without prior notice and opportunity for public comment. The amended regulations conform directly with the provisions of law which were amended by Pub. L. 100-322. The agency has no discretion in this matter. Consequently, public comment is unnecessary.

The Catalog of Federal Domestic Assistance number for the program affected by this regulation is 64.111.

**List of Subjects in 38 CFR Part 21**

Civil rights, Claims, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: November 9, 1988.

Thomas K. Turnage,  
Administrator.

38 CFR Part 21, Vocational Education and Rehabilitation, is amended as follows:

**PART 21—[AMENDED]**

1. In § 21.4200, paragraph (g) and its authority citation are revised to read as follows:

**§ 21.4200 Definitions.**

(g) *Standard class session.* The term means the time an educational institution schedules for class each week in a regular quarter or semester for one quarter or one semester hour of credit.

(1) For enrollments and reenrollments which begin before May 20, 1988, a standard class session is not less than 1 hour (or 50-minute period) of academic instruction, 2 hours of laboratory instruction, or 3 hours of workshop training.

(2) For enrollments and reenrollments which begin after May 19, 1988, a standard class session is not less than 1 hour (or 50-minute period) of academic instruction, 2 hours (or two 50-minute periods) of laboratory instruction, or 3 hours of workshop training.

(Authority: 38 U.S.C. 1788(c); Pub. L. 96-466, 100-322)

2. In § 21.4270, footnote 1 to the chart in paragraph (a) is revised to read as follows:

**§ 21.4270 Measurement of courses.**

(a) \* \* \*

<sup>1</sup> An educational institution offering courses not leading to a standard college degree may measure such courses on a quarter- or semester-hour basis as indicated for collegiate undergraduate courses in paragraph (b) of this section for an enrollment or reenrollment which begins before May 20, 1988, provided: (1) The academic portions of such courses require outside preparation and are measured on a minimum of 50 minutes net of instruction per week for each quarter or semester hour of credit, (2) the laboratory portions of such courses are measured on a minimum of 2 hours of attendance per week for each quarter or semester hour of credit, and (3) the shop portions of such courses are measured on a minimum of 3 hours of attendance per week for each quarter or semester hour of credit. An educational institution offering courses not leading to a standard college degree may measure such courses on a quarter- or semester-hour basis as indicated for 1988, provided: (1) The academic portions of such courses require outside preparation and are measured on a minimum of 50 minutes net of instruction per week for each quarter or semester hour of credit, (2) the laboratory portions of such courses are measured on a minimum of 2 hours (or two 50-minute periods) of attendance per week for each quarter or semester hour of credit, and (3) the shop portions of such courses are measured on a minimum of 3 hours of attendance per week for each quarter or semester hour of credit. In no event shall such courses be considered a full-time course when less than 22 hours per week of attendance is required. Not more than 2 hours rest period shall be allowed per week for courses in which shop practice is an integral part of full time courses; 1½ hours for three-quarter-time courses of 16-21 clock hours; 1 hour for one-half-time courses of 11-15 clock hours; or ½ hour for less than half-time courses of 6-10 clock hours; no rest period shall be allowed for courses of less than 6 clock hours of attendance.

(Authority: 38 U.S.C. 1788; Pub. L. 100-322)

[FR Doc. 88-27619 Filed 11-30-88; 8:45 am]

BILLING CODE 8320-01-M

# Proposed Rules

Federal Register

Vol. 53, No. 231

Thursday, December 1, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 124

#### Meetings on the Business Opportunity Development Reform Act of 1988

**AGENCY:** Small Business Administration.

**ACTION:** Notice of public meetings.

**SUMMARY:** The Business Opportunity Development Reform Act of 1988, Pub. L. 100-656, requires the Small Business Administration (SBA) to hold public meetings on the nature and extent of regulations implementing the Act. This notice advises the public that SBA will hold such meetings on December 9th and 19th, 1988, in San Francisco, California, and Washington, DC, respectively.

**DATES:** Friday, December 9, 1988; Monday, December 19, 1988.

**ADDRESSES:**

Federal Building, 450 Golden Gate Avenue, 19th Floor Ceremonial Courtroom, San Francisco, CA 94102, 9:00 a.m. to 4:00 p.m.

Departmental Auditorium, between 12th & 14th Streets, on Constitution Avenue, NW., Washington, DC 20407, 9:00 a.m. to 4:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** Milton Wilson, Jr., U.S. Small Business Administration, 1441 L Street, NW., Room 602, Washington, DC 20416, telephone—(202) 653-6526.

**SUPPLEMENTARY INFORMATION:** The Business Opportunity Development Reform Act of 1988, Pub. L. 100-656, requires SBA to hold meetings to ascertain public comment on the nature and extent of regulations needed to implement the Act. SBA will hold two such meetings in compliance with the Act. The first meeting will be on Friday, December 9, 1988, in San Francisco, California (see **ADDRESS** line). The second meeting will be on Monday, December 19, 1988, in Washington, DC (see **ADDRESS** line). Both meetings will be chaired by Joseph O. Montes, Associate Administrator for Minority

## Small Business and Capital Ownership Development.

The purpose of this Act is to:

1. Affirm that the Capital Ownership Development Program and the section 8(a) authority shall be used exclusively for business development purposes to help small businesses owned and controlled by the socially and economically disadvantaged to compete on an equal basis in the mainstream of the American economy;

2. Affirm that the measure of success of the Capital Ownership Development Program, and the section 8(a) authority, shall be the number of competitive firms that exit the program without being unreasonably reliant on section 8(a) contracts and that are able to compete on an equal basis in the mainstream of the American economy;

3. Ensure that program benefits accrue to individuals who are both socially and economically disadvantaged;

4. Increase the number of small businesses owned and controlled by such individuals from which the United States may purchase equipment, products and services, including construction work; and

5. Ensure integrity, competence and efficiency in the administration of business development services and the Federal contracting opportunities made available to eligible small businesses.

Interested persons will be given a reasonable time for an oral presentation and may submit written statements of their presentations in advance, if they wish. If a large number of participants desire to make statements, a time limitation on each presentation may be imposed.

In order that appropriate arrangements can be made, those wishing to participate should notify Milton Wilson, Jr. (see **ADDRESS** line) in writing at least three days prior to the hearing. Cameras, food and beverages are prohibited in the San Francisco hearing, and all participants must pass through court security.

Persons not able to attend either meeting should submit their comments to Milton Wilson, Jr., (see **ADDRESS** line) by January 3, 1989.

Dated: November 23, 1988.

James Abdnor,  
Administrator.

[FR Doc. 88-27618 Filed 11-30-88; 8:45 am]

BILLING CODE 8025-01-M

## FEDERAL TRADE COMMISSION

### 16 CFR Part 453

#### Mandatory Review of the Funeral Industry Practices Trade Regulation Rule

**AGENCY:** Federal Trade Commission.

**ACTION:** Additional public hearing scheduled for Washington, DC.

**SUMMARY:** On May 31, 1988, the Commission published in the *Federal Register* (53 FR 19864) its Notice of Proposed Rulemaking for its mandatory review of the Funeral Industry Practices trade regulation rule. The Notice announced that hearings on the rule would be held in Washington, DC, commencing on November 7, 1988, in Chicago, Illinois, commencing on December 5, 1988, and in San Francisco, California, commencing on January 9, 1989. The Presiding Officer has now scheduled an additional hearing to commence in Washington, DC, on January 17, 1989.

**DATES:** The public hearing will commence in Washington, DC, at 9:30 a.m. on January 17, 1989, in Room 332, Federal Trade Commission Building, at 6th Street and Pennsylvania Avenue, NW., Washington, DC. Prepared statements of witnesses and exhibits, if any, must be submitted on or before December 9, 1988.

**ADDRESS:** Prepared statements and exhibits should be sent to Henry B. Cabell, Presiding Officer, Room 319, Federal Trade Commission, 6th and Pennsylvania Avenue, NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Henry B. Cabell, Presiding Officer, Room 319, Federal Trade Commission, 6th and Pennsylvania Avenue, NW., Washington, DC 20580, telephone number: 202-326-3642.

**SUPPLEMENTARY INFORMATION:** On May 31, 1988, the Commission published its Notice of Proposed Rulemaking in the *Federal Register* (53 FR 19864) for its mandatory review of the Funeral Industry Practices trade regulation rule. The notice included a schedule of dates and places of public hearings to be held in the proceeding.

Representatives of the Commission staff have requested the Presiding Officer to schedule an additional

hearing commencing on January 17, 1989 in Washington, DC, for the purpose of receiving testimony from two expert witnesses who were unable to testify in the three previous hearings. Counsel for National Selected Morticians and counsel for the National Funeral Directors Association supported this request. In addition, counsel for the American Association of Retired Persons has asked that an expert witness be permitted to testify at this additional hearing on its behalf. The Presiding Officer has determined that the testimony of these witnesses, which is concerned with the substantial economic issues in the proceeding, to be of particular importance.

Accordingly, the request of the staff for an additional hearing has been granted and the Presiding Officer has scheduled an additional public hearing to commence at 9:30 a.m. on January 17, 1989 in Room 332, Federal Trade Commission Building. The only witnesses permitted to testify at this hearing will be: Dr. Burt F. Barnow, Dr. Timothy P. Daniel, and Dr. Fred S. McChesney. Their respective prepared statements and accompanying exhibits must be filed with the Presiding Officer on or before December 9, 1988.

#### List of Subjects in 16 CFR Part 453

Funeral homes, Price disclosure,  
Trade practices.  
Henry B. Cabell,  
Presiding Officer.  
[FR Doc. 88-27638 Filed 11-30-88; 8:45 am]  
BILLING CODE 6750-01-M

## DEPARTMENT OF THE TREASURY

### 31 CFR Part 103

#### Reopening of Comment Period on Bank Secrecy Act Regulations

**AGENCY:** Departmental Offices, Treasury.

**ACTION:** Proposed rule; reopening of comment period.

**SUMMARY:** A notice that Treasury was reopening the comment period on the Proposed Amendments to the Bank Secrecy Act Regarding Reporting and Recordkeeping Requirements by Casinos, published in the *Federal Register* on August 18, 1988 (53 FR 31370) (corrections published August 24, 1988 (53 FR 32323)), to November 14, 1988, was announced in the *Federal Register* on October 28, 1988 (53 FR 43736). In response to requests to extend further the time for public comment, notice is hereby given that Treasury is again reopening the comment period.

**DATE:** Comments will be accepted through December 14, 1988.

**ADDRESS:** Address written comments to: Amy G. Rudnick, Director, Office of Financial Enforcement, Office of the Assistant Secretary (Enforcement), Department of the Treasury, Room 4320, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

**FOR FURTHER INFORMATION CONTACT:** John M. Zoscak, Jr., Attorney-Adviser, Office of the Assistant General Counsel (Enforcement), Room 2000, 1500 Pennsylvania Ave., NW., Washington, DC 20220, (202) 566-2914.

Date: November 18, 1988.

John P. Simpson,  
Acting Assistant Secretary (Enforcement).  
[FR Doc. 88-27669 Filed 11-30-88; 8:45 am]  
BILLING CODE 4810-25-M

## VETERANS ADMINISTRATION

### 38 CFR Part 3

#### Claims Based on Exposure to Ionizing Radiation and Herbicides Containing Dioxin

**AGENCY:** Veterans Administration.  
**ACTION:** Proposed regulations.

**SUMMARY:** The Veterans Administration (VA) is proposing to amend its adjudication regulations concerning diseases considered to be "radiogenic." These amendments are necessary to implement recommendations by the Veterans' Advisory Committee on Environmental Hazards. The intended effect of these amendments is to extend the possible entitlement to compensation for veterans with disabilities claimed to have been the result of exposure to ionizing radiation in service. We also propose to clarify the other provisions under which service connection may be established for injury or disease claimed to be the result of exposure to ionizing radiation or to herbicides containing dioxin during service in the Republic of Vietnam.

**DATES:** Comments must be received on or before January 3, 1989. Comments will be available for public inspection until January 10, 1989. These changes are proposed to be effective 30 days after the date of publication of the final rule.

**ADDRESSES:** Interested persons are invited to submit written comments, suggestions, or objections regarding these changes to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for

public inspection only in the Veterans Services Unit, room 132, at the above address and only between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays) until January 10, 1989.

**FOR FURTHER INFORMATION CONTACT:** Robert M. White, Chief, Regulations Staff, Compensation and Pension Service, Department of Veterans Benefits, (202) 233-3005.

**SUPPLEMENTARY INFORMATION:** The Veterans' Dioxin and Radiation Exposure Compensation Standards Act, Pub. L. 98-542, required the VA to promulgate regulations for the adjudication of compensation claims in which disabilities or deaths of veterans are alleged to be the result of in-service exposure to ionizing radiation or herbicides containing dioxin. It also required that the regulations be based on sound scientific and medical evidence. To assist the VA in its effort, the law mandated the establishment of the Veterans' Advisory Committee on Environmental Hazards.

The Advisory Committee has recommended that a posterior subcapsular cataracts and non-malignant thyroid nodular disease be considered "radiogenic" and that the gender restriction regarding breast cancer be deleted. They also recommended the manifestation periods for cataracts and thyroid disease and that the time restriction for the manifestation of leukemia be deleted.

We propose to implement these recommendations by appropriately amending 38 CFR 3.311b(2) and (b)(4). It is to be noted that the Advisory Committee stated that in order to warrant a causal relationship between exposure to ionizing radiation and the development of opacities of the lens, the radiation dose would have to be at least 200 rads. The dosage is one of the factors for consideration in claims based on radiation exposure (38 CFR 3.311b(e)(1)). We also propose to add, in parentheses, the term "lymphocytic" for chronic lymphatic leukemia as it is the preferred medical term.

We also propose to amend 38 CFR 3.311b(h) and 38 CFR 3.311a(g) to specify that the other provisions under which service connection may be established for injury or disease claimed to be the result of exposure to ionizing radiation or to herbicides containing dioxin during service in the Republic of Vietnam, respectively, are those governing direct service connection, service connection by aggravation, or presumptive service connection.

The Radiation-Exposed Veterans Compensation Act of 1988, Pub. L. 100-321, amended Title 38, United States Code, section 312, to establish presumptive service connection for certain radiation-exposed veterans. A separate proposed rule is being prepared to amend 38 CFR 3.309 to implement the above-cited law. We propose to amend 38 CFR 3.311b(a)(1) by adding a reference to § 3.309.

The Administrator hereby certifies that these regulatory proposed amendments will not have a significant economic impact on the substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. The reason for this certification is that these proposed amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these proposed amendments are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the VA has determined that these proposed regulatory amendments are non-major for the following reasons:

(1) They will not have an annual effect on the economy of \$100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Catalog of Federal Domestic Assistance program numbers are 64.100, 64.101, 64.106, 64.109, and 64.110.

#### List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pension, Veterans.

Approved: October 12, 1988.  
Thomas K. Turnage,  
Administrator.

38 CFR Part 3, Adjudication, is proposed to be amended as follows:

#### PART 3—[AMENDED]

1. In § 3.311a, paragraph (g) is revised to read as follows:

**§ 3.11a Claims based on exposure to herbicides containing dioxin during service in the Republic of Vietnam.**

(g) *Service connection under other provisions.* Nothing in the section will be construed to prevent the establishment of service connection for any disease or injury shown to have been incurred or aggravated during active service in accordance with §§ 3.304, 3.306, or 3.307. However, service connection will not be established on the basis of a causal relationship to exposure to herbicides containing dioxin during service in the Republic of Vietnam for any disease not specified in paragraph (c) of this section. (Authority: 38 U.S.C. 210(c))

2. In § 3.111b, the first sentence of paragraph (a)(1) is revised, paragraphs (b)(2)(i), (b)(2)(iii), (b)(2)(xiv), (b)(2)(xv), (b)(4), and (h) are revised, and paragraphs (b)(2)(xvi) and (xvii) and authority citations for paragraphs (a)(1), (b)(2), and (h) are added to read as follows:

#### § 3.311b Claims based on exposure to ionizing radiation.

(a) \* \* \*

(1) *Dose assessment.* In all claims in which it is established that a radiogenic disease, listed in paragraph (b)(2) of this section, first became manifest after service and was not manifest to a compensable degree within any applicable presumptive period as specified in §§ 3.307 and 3.309, and it is contended the disease is a result of exposure to ionizing radiation in service, an assessment will be made as to the size and nature of the radiation dose or doses. \* \* \*

(Authority: 38 U.S.C. 210(c))

\* \* \*

(b) \* \* \*

(2) \* \* \*

(i) All forms of leukemia except chronic lymphatic (lymphocytic) leukemia;

\* \* \*

(iii) Breast cancer;

\* \* \*

(xiv) Salivary gland cancer;

(xv) Multiple myeloma;

(xvi) Posterior subcapsular cataracts; and

(xvii) Non-malignant thyroid nodular disease.

(Authority: 38 U.S.C. 210(c))

\* \* \*

(4) For the purposes of paragraph (b)(1) of this section:

(i) Bone cancer must become manifest within 30 years after exposure;

(ii) Leukemia may become manifest at any time after exposure;

(iii) Posterior subcapsular cataracts must become manifest 6 months or more after exposure; and

(iv) Other diseases specified in paragraph (b)(2) of this section must become manifest 5 years or more after exposure.

(Authority: 38 U.S.C. 210(c))

\* \* \*

(h) *Service connection under other provisions.* Nothing in this section will be construed to prevent the establishment of service connection for any injury or disease shown to have been incurred or aggravated during active service in accordance with §§ 3.304, 3.306, 3.307, or 3.309. However, service connection will not be established on the basis of a causal relationship to exposure to ionizing radiation in service for any disease not specified in paragraph (b)(2) of this section.

(Authority: 38 U.S.C. 210(c); Pub. L. 98-542)

[FR Doc. 88-27620 Filed 11-30-88; 8:45 am]

BILLING CODE 8320-01-M

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Parts 51 and 52

[FRL-3478-6; AL-016]

#### Approval and Promulgation of Implementation Plans, Alabama; New Source Review Regulatory Changes

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve revisions to the Alabama State Implementation Plan (SIP) which were submitted to EPA on November 20, 1985. Alabama has revised its regulation for new source review in nonattainment areas (NSR) to add an exemption for sources which would be considered major solely by virtue of their fugitive emissions. This exemption does not apply to twenty-six source categories which are listed in the regulation. This provision is identical to the requirements of 40 CFR 51.165(a)(4) (formerly 40 CFR 51.18(j)(4)). Also, Alabama is adding to their regulation a section to allow public participation in the State's construction permit review process for nonattainment areas. This addition to the Alabama regulation meets the requirements of 40 CFR 51.165 (formerly 40 CFR 51.18(h)) for those permits, except that 40 CFR 51.161(2)(ii) requires a public comment period of at least thirty days.

**DATE:** To be considered, comments must reach us by January 3, 1989.

**ADDRESSES:** Copies of the documents relevant to this action are available for public inspection at the following locations:

Environmental Protection Agency,  
Region IV, Air Programs Branch 345  
Courtland Street, NE., Atlanta,  
Georgia 30365.  
Air Division Alabama Department of  
Environmental Management, 1751  
Federal Drive Montgomery, Alabama  
36109.

**FOR FURTHER INFORMATION CONTACT:**  
Beverly T. Hudson of the EPA Region IV  
Air Programs Branch, at the above  
address and telephone (404) 347-2864 or  
FTS 257-2864.

**SUPPLEMENTARY INFORMATION:** On  
November 20, 1985, Alabama submitted  
regulation changes and revisions to the  
Alabama State Implementation Plan  
(SIP). This submittal contained  
certification that the revisions were  
preceded by adequate notice and a  
public hearing. EPA proposes to approve  
these revisions as submitted on the  
above dates. A discussion of the  
revisions and the basis for EPA's  
proposal action now follows.

Two revisions to Chapter 16 of  
Alabama's Air Pollution Control  
Commission Rules and Regulations were  
adopted by the Alabama Department of  
Environmental Management (ADEM) on  
November 13, 1985. The first is a change  
in 16.3.2(1). Specifically, subparagraph  
16.3.2(1)(2) has been added to exempt  
certain nonattainment area sources from  
review under this new source review  
regulation. These sources are included  
in specific industry categories and  
would not be considered major sources  
or major modifications unless fugitive  
emissions were included in the total  
emissions calculations. The list of  
source categories and exemption  
provisions is identical to that in EPA's  
nonattainment area exemption rule  
found at 40 CFR 51.165(a)(4), except  
that "Fossil fuel-fired steam electric  
plants of more than 250 million British  
thermal units per hour heat input" is  
omitted. This was an oversight on the  
part of the State, and will be corrected  
by the State in the near future. In the  
meantime no environmental effect is  
expected from the omission, since the  
only possible effect is to exclude fugitive  
emissions in determining if a steam  
electric plant is a major source, and the  
nature of steam electric plants causes  
them to be major even excluding all  
fugitive emissions.

As indicated above, the addition of  
subparagraph 16.3.2(1)(2) changes the  
Alabama NSR rule to match the federal

NSR rule in fugitive emissions contained  
in 40 CFR 51.165. However, it represents  
a technical relaxation in the SIP as it  
could result in sources in certain  
categories becoming newly exempt from  
NSR requirements in nonattainment  
areas including those lacking fully  
approved plans. Nevertheless, EPA  
believes this change is approvable, for  
the following reasons. In practical terms  
the only area likely to be affected is the  
Jefferson County ozone nonattainment  
area. Jefferson County is also a  
designated particulate matter  
nonattainment area. All construction  
bans that were in effect for particulate  
matter (TSP) nonattainment areas were  
lifted with the promulgation of a new  
particulate standard (PM<sub>10</sub>) on July 1,  
1987 (52 FR 24634). Portions of Jackson,  
Colbert and Lauderdale Counties are  
nonattainment for sulfur dioxide (SO<sub>2</sub>),  
but fugitive emissions are generally not  
significant in determining NSR  
applicability for SO<sub>2</sub> sources. Etowah  
and Mobile Counties are designated  
ozone nonattainment areas, but EPA has  
redesignated them to attainment. See 52  
FR 17952 (May 13, 1987). As to the  
Jefferson County ozone nonattainment  
area, the County adopted an attainment  
plan for ozone, which was submitted to  
EPA for review in November, 1986.  
However, before EPA completed its  
substantive review, it determined that  
the plan needed to be adopted by  
Alabama as well to ensure state  
enforceability. This must be  
accomplished before EPA can complete  
its review and determine whether to  
propose approval of the plan. Alabama  
has notified EPA that it expects state  
approval to occur in the near future.

Thus, it appears that reasonable  
efforts are being made to adopt and  
submit a complete plan for the  
remaining ozone nonattainment areas in  
Alabama. In addition, the State has  
indicated that it expects that few, if any,  
sources will actually be exempted from  
NSR by virtue of this change. No major  
ozone sources subject to NSR have  
located in Alabama since this regulation  
was adopted four years ago. In addition,  
Alabama has stated that this change  
would not constrain the State's ability to  
obtain any additional emissions  
reductions needed in its attainment  
efforts. Thus, EPA does not expect this  
change to have a significant effect on air  
quality in Alabama.

This revision originally addressed the  
Total Suspended Particulate (TSP)  
ambient air quality standards. However,  
EPA on July 1, 1987 (52 FR 24634),  
replaced the TSP ambient air quality  
standards with a new standard that  
measures only those particles with an  
aerodynamic diameter equal to or less

than 10 micrometers (PM<sub>10</sub>). At the  
State's option, EPA is continuing to  
process TSP SIP revisions which were in  
process at the time the new PM<sub>10</sub>  
standard was promulgated. In the policy  
published on July 1, 1987 (52 FR 24679,  
Column 2), EPA stated that it would  
regard existing TSP SIP's as necessary  
interim particulate matter plans during  
the period preceding the approval of  
State plans specifically aimed at PM<sub>10</sub>.

Since 16.3.2 already requires review of  
all National Ambient Air Quality  
Standards, the State's regulation  
automatically requires that new and  
modified sources be reviewed for PM<sub>10</sub>.  
Alabama requested that Jefferson  
County be redesignated to unclassifiable  
for TSP in a letter dated February 2,  
1988. This redesignation will be granted  
upon approval of Alabama's PM<sub>10</sub> SIP.  
Significant level values will be included  
in a separate *Federal Register Notice*  
which addresses the PM<sub>10</sub> provisions.

Alabama's SIP does not contain a  
definition of fugitive emissions, as  
required by 40 CFR 51.165(a)(1)(ix)  
(formerly 40 CFR 51.18(j)(ix)) whenever  
the exemption for fugitive emissions is  
used. This was an oversight, and  
Alabama is currently in the process of  
adopting the required definition. Final  
approval of 16.3.2(1)(2) will be made only  
after this definition is adopted and  
submitted to EPA.

The second revision was the addition  
of a new paragraph, 16.3.2(m), which  
requires public participation during  
State evaluation of applications for  
sources to construct or modify a facility  
in a nonattainment area. Previously  
Alabama only required public  
participation in prevention of significant  
deterioration (PSD) areas. This  
regulation includes procedures similar to  
the procedure which Alabama follows  
for PSD, and it allows the public to  
comment on all applications. All  
comments and response are considered  
before a final decision is made to accept  
or reject the permit application and to  
issue the permit.

However, the regulation differs from  
the EPA requirements for public notice  
at 40 CFR 51.161 in that it specifies  
Alabama will determine the length of  
each public comment period, rather than  
require a 30-day notice for each permit.  
EPA proposes to approve the regulation  
in spite of this deficiency because the  
regulation represents a significant  
improvement over the present  
regulation, which does not provide for  
any public notice. The Alabama SIP will  
still be deficient because of this  
particular item, and also because public  
notice is provided for only PSD and NSR

permits rather than for all permits as required by 40 CFR 51.161(l).

Further details pertaining to these regulation changes are contained in the technical support document, which is available for public inspection at EPA's Regional Office in Atlanta, Georgia.

#### Proposed Action

After reviewing Alabama's New Source Review SIP revisions, EPA has found they substantially meet the requirements contained in 40 CFR Part 51. EPA is therefore proposing to approve them.

Under 5 U.S.C. 605(b), I certify that this SIP revision does not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

#### List of Subjects in 40 CFR Parts 51 and 52

Air pollution control,  
Intergovernmental relations.

Authority: 42 U.S.C. 7401-7642.

Dated: May 12, 1987.

Lee A. DeHihns III,

Acting Regional Administrator.

**Editorial Note**—The document was received at the Office of the Federal Register November 15, 1988.

[FR Doc. 88-26721 Filed 11-30-88; 8:45 am]

BILLING CODE 6560-50-M

#### 40 CFR Part 52

[FRL-3474-3]

#### Approval and Promulgation of State Implementation Plans; North Dakota

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve the revision to the Implementation Plan for the Control of Air Pollution for the State of North Dakota. The revisions were submitted on January 26, 1988, by the Governor of North Dakota. The revisions established new regulations and revised existing regulations and procedures to make them equivalent to the New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAPs), Prevention of Significant Deterioration (PSD), Stack Heights and Visibility. The revisions also updated existing State rules and provided new State rules for oil and gas production facilities. This action only addresses the PSD rule

revisions, the updating of existing State rules and the addition of the new rules for oil and gas production facilities. This action does *not* address the new and revised rules for NSPS, NESHAPs, Stack Heights or Visibility. These latter items are being addressed in separate actions.

**DATES:** Comments must be received on or before January 3, 1989.

**ADDRESSES:** Written comments on this action should be addressed to: Chief, Air Programs Branch, Environmental Protection Agency, Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202.

Copies of the State submittal are available for public inspection between 8:00 a.m. and 4:00 p.m. Monday through Friday at the following office: Environmental Protection Agency, Region VIII, Air Programs Branch, Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202.

#### FOR FURTHER INFORMATION CONTACT:

Laurie Ostrand, Environmental Protection Agency, Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202, (303) 293-1764, FTS 564-1764.

**SUPPLEMENTARY INFORMATION:** On January 26, 1988, the Governor of North Dakota submitted to EPA revisions to the Implementation Plan for the Control of Air Pollution for the State of North Dakota. The revisions established new regulations and revised existing regulations and procedures to make them equivalent to NSPS, NESHAPs, PSD, Stack Heights and Visibility. The revisions also updated various existing State rules and provided new State rules for oil and gas production facilities. This action only addresses the PSD rule revisions, the updating of various existing State rules and the addition of the new rules for oil and gas production facilities. A more detailed discussion of the revisions follows below.

#### 1. Chapter 33-15-01—General Provisions

The definition of "Trade waste" [33-15-01-04(36)] was revised by adding the term "wood-containing preservatives" to the list of what constitutes a "trade waste."

A change was made in the malfunctions regulation [33-15-01-13(2)]. Prior to this change, the malfunction subsection required companies to notify the State immediately concerning any malfunction that was expected to cause a violation of any article or other applicable rules and regulations of the State. This proved to be unworkable in some situations, and, as a matter of practice, the State had been requiring notifications only if the malfunction was expected to last greater than 24 hours or if the discharge

of the contaminant posed an immediate danger. The regulations have been amended to require sources to report a malfunction to the State as soon as possible if the malfunction is expected to last longer than 24 hours and cause the emission of air contaminants in violation of this article or other applicable rules and regulations of the State. The regulation has also been amended to require immediate notification to the State for any malfunction that would threaten health or welfare, or pose an imminent danger.

A subsection on continuous emission monitoring system (CEM) failures [33-15-01-13(3)] was added. This addition requires that when a CEM fails, an alternative method acceptable to the State for measuring or estimating emissions must be undertaken as soon as possible. In addition, timely repair of the emission monitoring system must be made.

The State added a new section on the confidentiality of records [33-15-01-16] to clarify the State's procedure concerning the submittal of confidential information. This section addresses public inspection, information submitted as trade secrets, accepted trade secret claims, rejected trade secret claims, appeal of nondisclosure claims, retention of confidential information, maintenance of log, transmittals of confidential information, and relationship to issuance of permits.

#### 2. Chapter 33-15-02—Ambient Air Quality Standards

There were numerous changes to this Chapter to bring the wording of the regulation up-to-date and to clarify the Air Quality Guidelines the State follows.

The State rescinded several Ambient Air Quality Standards (AAQS) which were no longer used or necessary. The rescinded AAQS included settled particulate (dustfall), coefficient of haze, reactive sulfur (sulfation), suspended sulfate, sulfuric acid mist, sulfur trioxide or any combination thereof, and hydrocarbons.

The State also amended its hydrogen sulfide (H<sub>2</sub>S) AAQS. Prior to the regulation change, there were two AAQS for H<sub>2</sub>S. Both standards were based on ½-hour concentrations. This proved to be cumbersome for dispersion modeling purposes, as well as general review of monitoring data. The State changed the H<sub>2</sub>S standard to one 1-hour standard that it believes is as stringent as the two ½-hour standards.

The State deleted Table 2—Methods of Air Contaminant Measurement. Methods of measurement have been

incorporated by reference into 33-15-02-05, Methods of Sampling and Analysis.

### 3. Chapter 33-15-03—Restriction of Emission of Visible Air Contaminants

The State added provisions into 33-15-03-01 that require: (1) Existing sources to comply with the visible air contaminant restrictions for new installations in 33-15-03-02 when technology and feasibility develop; and (2) existing sources that install control technology capable of meeting the restrictions of 33-15-03-02 to meet those restrictions. The State also added provisions to allow parties aggrieved by the above two items the ability to request a hearing before the department, according to Article 33-22 and North Dakota Century Code Chapter 28-32.

In Method of Measurement, 33-15-03-05, the State defined "per hour" for Reference Method 9. The State also added to this subsection a sentence that allows sources to use a continuous opacity monitor to determine compliance with visible emission standards when Reference Method 9 opacity readings are not available.

For clarification, additional minor wording changes were incorporated into this Chapter.

### 4. Chapter 33-15-04—Open Burning Restrictions

Minor changes were adopted in a 33-15-04-02. One of these changes includes the addition of the requirement that open burning comply with the Rural Fire Mitigation Action Guide included in the North Dakota Rural Fire Contingency Plan.

Language in 33-15-04-02 (7)(c) and (8)(c), which restricted open burning between three hours after sunrise and three hours before sunrise, was omitted. Deleting this language allows open burning during times of the day when dampness and calm conditions prevail, and thus provides for safer burning conditions.

Language was also added [33-15-04-02(8) (c) and (d)] to restrict the burning of liquid hydrocarbons near Class I areas if it will adversely affect the ambient air or visibility of such areas, except in emergencies.

### 5. Chapter 33-15-05—Emissions of Particulate Matter Restricted

The State added 33-15-05-01(2)(b) and 33-15-05-02(2)(g) to provide a mechanism for parties aggrieved by restrictions applied on them to request a hearing, according to article 33-22 and North Dakota Century Code Chapter 28-32.

The maximum allowable emissions of particulate matter from fuel burning

equipment used for indirect heating (33-15-05-02) was amended to exempt the following from the particulate standard: (1) Sources with a heat input of not more than ten million BTU/hour and (2) sources with multiple boilers with a total aggregate heat input of not more than ten million BTU/hour. Previous to this revision, the rule had exempted sources with a heat input of less than five million BTU/hour or sources with multiple boilers each with heat inputs of five million BTU/hour or less and a total aggregate heat input of less than ten million BTU/hour.

Subdivision (f) was added to 33-15-05-02 and requires existing sources whose heat input is greater than 250 million BTU/hour and who are equipped with state-of-the-art control technology to comply with the particulate emission limitation of the fossil fuel-fired NSPS when directed by the State.

### 6. Chapter 33-15-07—Control of Organic Compounds Emissions

The State amended this Chapter to correct the overlap that existed between this Chapter and the NSPS Chapter concerning storage tanks. Storage tanks are now incorporated in the NSPS for storage tanks [33-15-12-01(8)].

### 7. Chapter 33-15-10—Control of Pesticides

The State added to this Chapter paragraph 33-15-10-02(3) to highlight the disposal requirements for surplus pesticides and empty pesticide containers.

### 8. Chapter 33-15-11—Prevention of Air Pollution Emergency Episodes

The State made minor wording changes in this Chapter to update its regulations.

### 9. Chapter 33-15-14—Designated Air Contaminant Sources, Permit To Construct, Permit To Operate

This Chapter was amended by adding alcohol plants to the list of designated air contaminant sources [33-15-14-01(1)(x)]. A paragraph was also added that prohibits permits to construct from being transferred without prior approval by the State [33-15-14-02(11)]. The permit to construct and permit to operate fees were compiled into one section [33-15-14-04] and updated. The fees were adopted as follows:

1. The filing fee of \$75.00 or \$100.00 was increased to \$150.00 for all sources.
2. A new classification system was developed based upon the frequency of inspections and the amount of staff time spent on projects. Annual costs were adjusted based upon the amount of staff

time involved with the various classifications.

3. An addition was made that allows the State to collect annual fees for sources operating under a permit to construct that have not yet received a permit to operate.

The State also changed the permit exemption limit [33-15-14-05(1) ((b) and (c))] for fuel burning equipment to be consistent with the language in the particulate emission rate exemption discussed in Chapter 33-15-05. Previous to the revision, fuel burning equipment, other than smokehouse generators, which had a heat input of not more than ten million BTUs/hour (and burned gaseous fuels containing not more than 2 and 5-tenths grain H<sub>2</sub>S per 100 standard cubic feet; or distillate oil) or one million BTU/hour (and burned residual oil); or 350,000 BTU/hour (and burned solid fuel), were exempt from obtaining a permit to construct or operate. The rule has been revised to exempt fuel burning equipment, other than smokehouse generators, which meet the following criteria:

- (1) The aggregate heat input does not exceed ten million BTU/hour.
- (2) The total aggregate heat input from all equipment does not exceed ten million BTU/hour.
- (3) The emissions from all equipment do not exceed 25 tons per year of any contaminant.

Finally, the State amended this Chapter to correct the overlap that existed between this Chapter and the NSPS Chapter concerning storage tanks. Storage tank exemptions are now incorporated in the NSPS Chapter (33-15-12).

### 10. Chapter 33-15-15—Prevention of Significant Deterioration

This Chapter was amended by updating the regulations and making them consistent with Federal regulations. The stack height section [33-15-15-01(3)] was revised by deleting all the stack height regulations from 33-15-15 and referencing the new stack height Chapter (33-15-18).

The State updated the air quality models subdivision [33-15-15-01(4)(f)(1)] by deleting the reference to outdated EPA modeling guidelines and inserting general language on modeling requirements. Dana Mount, Director, Division of Environmental Engineering, submitted a letter of interpretation on June 29, 1987, stating that the general language means the applicant must comply with the requirements of EPA 1986 version "Guidelines on Air Quality Models (Revised)", EPA 450/2-78-027R.

To the subdivision on additional impact analyses [33-15-15-01(4)(i)], the State added language to require evaluation of endangered and threatened species of vegetation and wildlife. To the subdivision on sources impacting federal Class I areas—additional impacts [33-15-15-01(4)(j)], the State clarified the notice requirements to the federal land managers. To the subdivision on Public Participation [33-15-15-01(5)], the State clarified the procedures on public hearings.

#### **11. Chapter 33-15-16—Restriction of Odorous Air Contaminants**

In this Chapter, the State made wording changes to clarify the rules. The changes allow a State-certified inspector to determine whether an odor is objectionable.

#### **12. Chapter 33-15-20—Control of Emission from Oil and Gas Production Facilities**

The State added this Chapter to establish registration and reporting requirements for oil and gas production facilities. The registration and reporting requirements provide a means to determine if sources are subject to PSD (33-15-15). They also provide requirements for the control of production facility emissions.

The State received numerous public comments, as well as comments from EPA, on the draft regulation revisions. In some instances the State amended its regulations in addressing such comments. EPA feels the State has adequately addressed all of the public comments, as well as EPA comments.

EPA made several interpretations regarding this submittal. The State was notified on June 13, 1988 of such interpretations. In a letter dated June 16, 1988, Dana Mount, Director, Division of Environmental Engineering, confirmed EPA's interpretations. The following are EPA's interpretations:

1. Subsequent to the State revising Chapter 33-15-11, Prevention of Air Pollution Emergency Episodes, 40 CFR 51, Appendix L, was amended to address PM-10 (see 52 FR 24672, 7/1/87). The State submitted draft regulations on March 8, 1988. EPA interprets the State's submittal of the draft regulations as a commitment to revise its regulations as required.

2. Subsequent to the State revising 33-15-15, 40 CFR 51.166, Prevention of Significant Deterioration, was amended to address PM-10 (see 52 FR 24672, 7/1/87). As required by Section 110(a)(2) of the Act, the State must adopt and submit to the [EPA] Administrator, within nine months, a plan to

implement, enforce and maintain the PM-10 ambient air quality standards. The State has submitted draft regulations to EPA and held a public hearing to address the PM-10 amendments to 40 CFR 51.166. EPA interprets the State's submittal of draft regulations and the holding of a public hearing as a commitment to revise its regulations as required.

3. Subsequent to the State revising 33-15-15, EPA promulgated Supplement A (1987) to the Guidelines on Air Quality Models on January 6, 1988 (see 53 FR 392). Supplement A (1987) adds four additional models to the Guidelines. Although the State has nine months from the effective date (November 6, 1988 in this case) to submit revisions to the rule, EPA is addressing Supplement A in this package. Because North Dakota's air quality modeling regulations [33-15-15-01(4)(f)] are written in such a manner as to not preclude the use of Supplement A (1987), EPA interprets the State's rules to mean that Supplement A (1987) and any future additions to the modeling guidelines promulgated by EPA will be utilized by the State to estimate ambient air concentration required under PSD.

4. Regarding Chapter 33-15-20, Control of Emissions from Oil and Gas Production Facilities, EPA would like to point out that it interprets the State's requirement that demonstrations must be performed in accordance with the "North Dakota Guideline for Air Quality Modeling Analyses" in 33-15-20-03(3) to mean that EPA's Guidelines on Air Quality Models (Revised) will also be followed, as appropriate. EPA makes this interpretation because, even though 33-15-20-03(3) specifically references the State's modeling guidelines, it also says that all sources that emit greater than 250 tpy must comply with the State's PSD chapter. In the State's PSD chapter, EPA modeling guidelines are required.

One further interpretation not addressed in the June 13, 1988, letter is with respect to the malfunction notification regulation, 33-15-01-13(2). EPA interprets this regulation as merely a notification requirement for sources that have a malfunction that can be expected to last longer than 24 hours and cause the emission of air contaminants in violation of statutes and regulations. Additionally, EPA interprets that all sources will report a malfunction, regardless of duration, if it would threaten health or welfare, or pose imminent danger. Whether a source is required to report a malfunction or not does not obviate such a source from meeting its obligation to comply with applicable

emission limitations and federal and State statutes and regulations.

In addition to the interpretations addressed in the June 13, 1988, letter to the State, EPA also requested the State to commit to correcting a few discrepancies found in the PSD regulations. When EPA reviewed the draft submittal which addressed PM-10, it found a few discrepancies in the State's PSD regulations that had not been detected earlier. The discrepancies are as follows: (1) In 33-15-15-01(2)(a), the following statement appeared, "the provisions of this Chapter do not apply to those counties or other functionally equivalent areas on a contaminant specific basis that exceed the national ambient air quality standard for sulfur dioxide or particulate matter." This is incorrect because PSD applies to those areas that have been designated attainment or unclassifiable for any National Ambient Air quality Standard (NAAQS) under Section 107 of the Clean Air Act. EPA pointed this out to the State and is requiring the State to amend this paragraph to say that this Chapter applies to areas designated as attainment or unclassifiable for *any* NAAQS. (2) In 33-15-15-01(6)(d), "subsections 5 and 6" should be "subsections 5, 6 and 7". (3) In 33-15-15-02(1), "subdivision d or e" should be "subdivision c or d". Although these discrepancies were noted in a submittal subsequent to the submittal EPA is currently processing, the EPA required the State to commit to correct these deficiencies in order to proceed with this submittal. In a letter dated June 16, 1988, Dana Mount, Director, Division of Environmental Engineering, committed to correct such discrepancies.

EPA proposes to take no action on the revisions to Chapter 33-15-16, Restrictions of Odorous Air Contaminants. This Chapter is not a part of the federally enforceable SIP, since it bears no relationship to attainment or maintenance of any NAAQS. (See 44 FR 63102, November 2, 1979.) Likewise, EPA has no basis for approving or disapproving these revisions to the Chapter.

#### **Proposed Action**

EPA hereby proposes to approve the revisions to the Implementation Plan for the Control of Air Pollution for the State of North Dakota as submitted on January 26, 1988, (except for the additions and revisions to the NSPS, NESHAPs, Stack Height and Visibility regulations which are being addressed in separate actions and the odor regulation which is not a part of the federally enforceable SIP) with the

interpretations as discussed and the understanding that the State will correct the discrepancies noted in the PSD regulations.

Under 5 U.S.C. § 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

#### List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401-7642.

Date: June 30, 1988.

James J. Scherer,

Regional Administrator.

[FR Doc. 88-27863 Filed 11-30-88; 8:45 am]

BILLING CODE 6560-50-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 46 CFR Parts 56 and 164

[CGD 86-035]

RIN 2115-AC32

#### Prohibition of Asbestos-Containing Construction Materials

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to revise the approval specification for noncombustible materials to delete references to asbestos as an acceptable noncombustible material for the construction of merchant vessels, and to update the list of designated testing laboratories for noncombustible materials. It is also proposed to delete references to asbestos gaskets from the regulations on piping systems. The Coast Guard no longer issues approvals for asbestos-containing structural fire protection materials, and does not permit the use of such materials in merchant vessel construction. The action taken under this docket will make the regulations consistent with established Coast Guard practice.

**DATE:** Comments must be received on or before January 17, 1989.

**ADDRESSES:** Comments should be mailed to Commandant (G-LRA-2/3600) (CGD 86-035), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593-0001. Comments may be delivered

to and will be available for inspection and copying at the Marine Safety Council (G-LRA-2/3600), Room 3600, U.S. Coast Guard, 2100 Second Street, SW., Washington, DC between the hours of 8:00 a.m. and 3:00 p.m. Monday through Friday, except holidays.

#### FOR FURTHER INFORMATION CONTACT:

Mr. Klaus Wahle, Office of Marine Safety, Security, and Environmental Protection, (202) 267-1444.

#### SUPPLEMENTARY INFORMATION:

Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Comments should include the names and addresses of persons making them, identifying this rulemaking (CGD 86-035), and the specific section or paragraph of the rules to which each comment applies, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed envelope or postcard is enclosed. The regulations may be changed in light of the comments received. All comments received before the expiration date of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if a written request for a hearing is received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

A regulatory information number (RIN) is assigned to each regulatory action listed on the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

#### Discussion

Coast Guard regulations require the construction of sections of certain types of commercial vessels to be of approved structural fire protection materials. The materials approval specifications are contained in Subchapter Q of Title 46 CFR. Materials which have complied with the applicable provisions of these specifications are issued Certificates of Approval.

Traditionally, many materials approved for fire protection purposes have contained asbestos. As the health hazards of asbestos became known, manufacturers of structural fire protection materials switched from producing asbestos-containing materials to asbestos-free substitutes. Now, no asbestos-containing materials are used.

The approval specification for noncombustible materials, 46 CFR

164.009, needs to be revised to formally remove references to asbestos as an acceptable structural fire protection material. Additionally, this rulemaking proposes to update the list of designated laboratories contained in § 164.009-1. The Coast Guard also proposes to revise 46 CFR 56.25-15, to delete reference to asbestos-metallic gaskets for high temperature or high pressure piping systems.

#### Drafting Information

The principal persons involved in drafting this proposal are: Mr. Klaus Wahle, Project Manager, and Lieutenant Commander Don M. Wrye, Project Attorney, Office of Chief Counsel.

#### Regulatory Evaluation

These proposed regulations are considered to be non-major under Executive Order 12291 and nonsignificant under DOT regulatory policies and procedures (44 FR 11034, February 26, 1979). The economic impact of this proposal is expected to be minimal. The proposed regulations simply delete references to asbestos and asbestos-containing materials as acceptable for use in vessel construction and as gasket material, and update the list of designated testing laboratories for noncombustible materials. Since the use of asbestos is now obsolete, there should be no economic impact on vessel construction or replacement of gaskets. Accordingly, the Coast Guard certifies that the proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

A draft regulatory evaluation has been prepared and placed in the rulemaking docket. The evaluation may be inspected and copied at the address listed above under **ADDRESSES**. Copies may also be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

#### Paperwork Reduction Act

The proposed regulations do not contain any information collection or recordkeeping requirements.

#### Environmental Analysis

This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2. of Commandant Instruction (COMDTINST) M16475.1B. A Categorical Exclusion Determination statement has been prepared and has been placed in the docket.

## Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this notice of proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

### List of Subjects

#### 46 CFR Part 56

Reporting and recordkeeping requirements, Vessels.

#### 46 CFR Part 164

Fire prevention, Marine safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Coast Guard proposes to amend Chapter I of Title 46, Code of Federal Regulations as follows:

### PART 56—[AMENDED]

1. The authority citation for Part 56 continues to read as follows:

Authority: 33 U.S.C. 1321(j), 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703, 5515; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

2. In § 56.25–15, paragraphs (b) and (c) are revised to read as follows:

#### § 56.25–15 Gaskets (reproduces 108.4).

(b) Only metallic gaskets may be used on flat or raised face flanges if the expected normal operating pressure exceeds 720 pounds per square inch or the operating temperature exceeds 750° F.

(c) The use of metal gaskets is not limited as to pressure provided the gasket materials are suitable for the maximum fluid temperatures.

### PART 164—[AMENDED]

3. The authority citation for Part 164 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703, 4104, 4302; E.O. 12234, 45 FR 58801 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

4. In § 164.009–1, paragraph (b) is revised to read as follows:

#### § 164.009–1 General.

(b) The test and measurements described in this subpart are conducted by a laboratory designated by the Commandant. The following laboratories are so designated:

Underwriters Laboratories, Inc., 333 Pfingsten Road, Northbrook, IL 60062.  
Dantest, National Institute for Testing and Verification, Amager Boulevard

115, DK 2300 Copenhagen S., Denmark.

#### § 164.009–3 [Removed]

5. Section 164.009–3 is removed.

6. Section 164.009–5 is revised to read as follows:

#### § 164.009–5 Noncombustible materials not requiring specific approval.

The following noncombustible materials may be used in merchant vessel construction though not specifically approved under this subpart:

(a) Sheet glass, block glass, clay, ceramics, and uncoated fibers.

(b) All metals, except magnesium and magnesium alloys.

(c) Portland cement, gypsum, and magnesite concretes having aggregates of only sand, gravel, expanded vermiculite, expanded or vesicular slags, diatomaceous silica, perlite, or pumice.

(d) Woven, knitted or needle punched glass fabric containing no additives other than lubricants not exceeding 2.5 percent.

Dated: October 21, 1988.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 88–27695 Filed 11–30–88; 8:45 am]

BILLING CODE 4910–14–M

### 46 CFR Part 161

[CGD 85–208]

RIN 2115–AC95

### Floating Electric Waterlight

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to revise 46 CFR 161.010 to replace the existing detailed-design requirements with the incorporation by reference of Underwriters Laboratories, Inc. (UL), ANSI/UL 1196, Standard for Floating Waterlights. Also, the Coast Guard proposes to replace the detailed plan approval process with a manufacturer self-certification method. Incorporation by reference of a current industry consensus standard, which is revised at more frequent intervals, will allow for the most current technological innovations to be incorporated into equipment design. Also, the manufacturer self-certification method will improve the plan approval process by reducing time delays and administrative procedures.

**DATE:** Comments must be received on or before March 1, 1989.

**ADDRESSES:** Comments may be mailed to the Commandant (G–LRA–2/21) (CGD 85–208), U.S. Coast Guard, Washington, DC 20593–0001. Comments may be delivered to, and are available for inspection and copying at the Marine Safety Council (G–LRA–2/21), Room 2110, U.S. Coast Guard, 2100 Second Street, SW., Washington, DC, between 8:00 a.m. and 3:00 p.m., Monday through Friday, except holidays.

#### FOR FURTHER INFORMATION CONTACT:

Mr. Randall N. Crenwelge, Marine Technical and Hazardous Materials Division, Room 1218, U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593–0001, (202) 267–2206. Normal office hours are from 7:30 a.m. until 4:00 p.m., Monday through Friday, except holidays.

#### SUPPLEMENTARY INFORMATION:

Interested persons are invited to participate in this rulemaking procedure by submitting written comments, data, or arguments. Each comment should include the name and address of the person submitting the comment, identify this notice (CGD 85–208), the specific section of the proposal to which each comment applies, and the reason for the comments. No public hearing is anticipated at this time, however, one may be held if written requests for a hearing are received, and it is determined that the opportunity to make oral presentations will benefit the rulemaking process. All comments will be reviewed and considered by the Coast Guard before taking further rulemaking action.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

#### Drafting Information

The principal persons involved in drafting this proposal are Mr. Randall N. Crenwelge, Project Manager, and Lieutenant Commander Don M. Wrye, Project Counsel, Office of Chief Counsel.

#### Background

Coast Guard regulations require floating electric waterlights to be attached to ring life buoys, liferafts, lifefloats, and other buoyant apparatus. Floating electric waterlights are required to be constructed and marked in accordance with 46 CFR 161.010, and they must be U.S. Coast Guard Approved.

The Coast Guard, waterlight manufacturers, and Underwriters Laboratories, Inc. (UL), an independent standards development and product certification agency, have worked together to develop an industry standard for floating waterlights. The result is ANSI/UL 1196, Standard for Floating Waterlights. The standard specifies construction and test requirements for floating waterlights, and it is equivalent to the existing U.S. Coast Guard regulations. It also contains the requirement of the 1983 amendments to the Safety of Life at Sea Convention of 1974.

This proposal modifies 46 CFR 161.010 by deleting the specific material, construction, performance, and test requirements. These sections would be replaced by incorporating ANSI/UL 1196 by reference. Also, the manufacturer would be required to test the waterlight using an independent laboratory which complies with Subpart 159.010-3. The manufacturer of a new waterlight would be required to submit to the Commandant (G-MTH-2), U.S. Coast Guard, a pre-approval sample, plans, specifications, a test report, and a self-certification statement indicating compliance with § 161.010. After receiving all the required items, an approval certificate would be issued to the manufacturer, and the plans, test report, and other materials would be retained for future reference. The manufacturer could then label the light with an approval number as required by the ANSI/UL standard. The light could then be mass produced.

Waterlights which have been previously approved and are currently being or will be manufactured with an existing approval number will not be affected by this proposed rulemaking as long as the present certificate is up-to-date. The Coast Guard will continue to accept extensions of approval for existing previously approved waterlights when their certificates expire.

#### Regulatory Evaluation

The proposed regulations are considered to be non-major under Executive Order 12291 and nonsignificant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal has been found to be so minimal that further evaluation is unnecessary. Presently, 46 CFR 161.010 requires waterlight manufacturers to submit plans, specifications, test records, and a pre-approval sample to the Coast Guard. The proposed regulations will not impose any new or additional submission requirements on the manufacturer. This proposal

removes the manufacturer's option to perform tests using Coast Guard supervision. This does not differ from present practice. Manufacturers usually do not have the required equipment for testing. The Coast Guard has not been contacted to witness any tests during the last several years. Therefore, any additional expense would be minimal. Since the impact of the proposal is minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

#### Paperwork Reduction Act

The proposed regulations do not impose any new information collection or record-keeping requirements on the public. The only paperwork requirements involve design, plan development, and submittal of plans and test results for record-keeping and oversight purposes, which are similar to requirements already approved by the Office of Management and Budget (OMB).

#### Environmental Impact

The Coast Guard has considered the environmental impact of the proposed regulations and, in accordance with section 2.B.2.C. of Commandant Instruction M16475.1B, has determined that this rulemaking is categorically excluded from further environmental documentation.

#### Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

#### List of Subjects in 46 CFR Part 161

Fire prevention, Marine safety, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Coast Guard proposes to amend Part 161 of Chapter 1 of Title 46, Code of Federal Regulations, as follows:

#### PART 161—[AMENDED]

1. The authority citation for Part 161 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703, 4104; 49 CFR 1.46.

2. Section 161.010-1 is revised to read as follows:

##### § 161.010-1 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal

Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of change must be published in the *Federal Register* and the material made available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street, NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G-MTH), 2100 Second Street, SW., Washington, DC 20593-0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part, and the sections affected are:

##### *Underwriters Laboratories, Inc.*

333 Pfingsten Road, Northbrook, Illinois 60062, ANSI/UL 1196, Standard for Floating Waterlights, 161.010-3; 161.010-5, Second Edition—March 23, 1987.

3. Section 161.010-3 is revised to read as follows:

##### § 161.010-3 Design, Construction, and Test Requirements.

(a) Each floating electric waterlight shall meet the requirements of ANSI/UL 1196.

4. Section 161.010-4 is revised to read as follows:

##### § 161.010-4 Inspections and methods of test.

(a) Each inspection and test report required by this subpart shall comply with Section 159.005-11 of this chapter.

(b) The U.S. Coast Guard reserves the right to make any inspection or test it deems necessary to determine the conformance of the materials and equipment to this subpart.

(c) The facilities, materials, and labor for all tests shall be furnished at no cost to the U.S. Coast Guard.

5. Section 161.010-5 is revised to read as follows:

##### § 161.010-5 Procedure for approval.

(a) A request for approval of an automatic floating electric waterlight must be submitted to the Commandant (G-MTH-2), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593-0001.

(b) All inspections and tests shall be performed by an independent laboratory which meets the requirements of Subpart 159.010-3.

(c) Each request for approval must contain:

(1) The name and address of the applicant,

(2) One copy of all plans and specifications that meet the

requirements of § 159.005-12 of this chapter,

(3) A pre-approval sample of the waterlight,

(4) An inspection and test report verifying compliance with the construction and test requirements of ANSI/UL 1196, and

(5) A statement by the manufacturer certifying that the waterlight complies with the requirements of this subpart.

§§ 161.010-6 and 161.010-7 [Removed].

6. Sections 161.010-6 and 161.010-7 are removed.

Dated: October 14, 1988.

J.I. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety Security and Environmental Protection.

[FR Doc. 88-27696 Filed 11-30-88; 8:45 am]

BILLING CODE 4910-14-M

## Federal Railroad Administration

### 49 CFR Part 225

[Docket No. RAR-3, Notice No. 1; Regulation Identifier Number 2130-AA44]

### Railroad Accidents/Incidents; Reports Classification, and Investigations; Miscellaneous Proposed Amendments

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to amend the rules pertaining to the reporting of railroad accidents and incidents to FRA. When a railroad alleges an employee human factor as the primary cause or contributing cause of an accident, it would be required to notify the employee involved/implicated that the railroad has made such allegations and that the employee has the right to submit a statement to FRA concerning the accident. This action is taken in order to implement section 24 of the Rail Safety Improvement Act of 1988 (Pub. L. 100-342), which provides that "if a railroad, in reporting an accident or incident under the Accident Reports Act (45 U.S.C. 38 *et seq.*), assigns human error as a cause of the accident or incident, such report shall include, at the option of each employee whose error is alleged, a statement by such employee explaining any factors the employee alleges contributed to the accident or incident." Interested parties are invited to submit comments for inclusion in the docket of this rulemaking.

**DATES:** (1) *Written Comments:* Written comment must be received on or before

January 27, 1989. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

(2) *Public Hearing:* A public hearing will be held at 10:00 a.m. on January 11, 1989. Any person who desires to make an oral statement at the hearing must notify the Docket Clerk by telephone or mail on or before January 5, 1989, and must submit three copies of the oral statement that he or she intends to make at the hearing by January 6, 1989.

**ADDRESSES:** (1) *Written Comments:* Written comments should identify the docket number and the notice number and must be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, 400 Seventh Street SW., Room 8201, Washington, DC 20590. Written comments will be available for examination, both before and after the closing date for written comments, during regular business hours at the same address.

(2) *Public Hearing:* The public hearing noted above will be held in room 6200 of the Nassif Building at the same street address. Persons desiring to make oral statements at the hearing should notify the Docket Clerk on or before January 5, 1989, by telephone (202-366-0635; FTS 366-0635) or by writing to: Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, 400 Seventh Street SW., Room 8201, Washington, DC 20590. In addition, each person who desires to make an oral statement at the hearing must submit to the Docket Clerk three copies of the oral statement that he or she intends to make at the hearing by January 6, 1989.

#### FOR FURTHER INFORMATION CONTACT:

Principal Program Person: Mr. T.S. Ellis, Office of Safety, Federal Railroad Administration, Washington, DC 20590, Telephone 202-366-2760 (FTS 366-2760).

Principal Attorney: Ms. Billie Stultz, Office of the Chief Counsel, Federal Railroad Administration, Washington, DC 20590, Telephone 202-366-0635 (FTS 366-0635).

#### SUPPLEMENTARY INFORMATION:

##### Background

On June 22, 1988, the President signed into the Rail Safety Improvement Act of 1988 (RSIA). Section 24 of that Act provides that "(i) if a railroad, in reporting an accident or incident under the Accident Reports Act (45 U.S.C. 38 *et seq.*), assigns human error as a cause of the accident or incident, such report shall include, at the option of each employee whose error is alleged, a statement by such employee explaining

any factor the employee alleges contributed to the accident or incident."

The legislative history of this provision indicates that Congress intended for FRA to allow submission of the employee's statement without delaying the submission of the railroad's accident report and for FRA to file the employee's statement with the applicable report from the railroad. (See "Joint Explanatory Statement of the Committee of Conference," in the Conference Report to accompany S. 1539, H.R. Rept. No. 100-637 (100th Cong. 2d Sess.)) That is in fact FRA's practice today and has been its practice for many years. The principal purpose of this provision appears to be threefold: (1) Ensuring that employees are aware of this right, (2) ensuring that employees are notified of the instances where the right may be exercised, and (3) institutionalizing the practice in regulations.

The central requirement of the proposed rule is that the railroad provide written notification to any employee whom the railroad alleges to have been responsible, at least in part, for an act, omission, or condition cited by the railroad as a primary or contributing cause of a certain type of employee human factor accident, informing the employee of the relevant allegations and of his or her right to file a statement with FRA. A copy of the proposed standard form for notification of employees is appended to this Notice of Proposed Rulemaking.

Section 209 of the Federal Railroad Safety Act of 1970 (FRSA) provides that "(t)he Secretary shall include in, or make applicable to, any railroad safety \* \* \* regulation issued under this title a civil penalty for violation thereof \* \* \*." The RSIA increases the maximum penalty for violation of a regulation issued under the FRSA from \$2,500 to \$10,000 and, in certain circumstances, \$20,000. See 53 FR 28594-28598 (1988). The final rule will include a revised penalty schedule for Part 225 reflecting the higher maximum penalties now available and adding entries for the new section proposed herein. See the recent revisions to the penalty provision and penalty schedule of Part 225 required by the RSIA. 53 FR 28594, 28601 (1988). Because FRA's penalty schedules are statements of policy, notice and comment are not required to revisions to those schedules. See 5 U.S.C. 553(b)(3)(A). Nevertheless, interested parties are welcome to submit their views on what penalties may be appropriate.

### Environmental Impact

FRA has evaluated this proposed rule in accordance with its procedures for ensuring full consideration of the potential environmental impacts of FRA actions, as required by the National Environmental Policy Act and related directives. This notice meets the criteria that establish this as a non-major action for environmental purposes.

### E.O. 12291 and DOT Regulatory Policies and Procedures

This proposed rule has been evaluated in accordance with existing policies and procedures. It is considered to be non-major under Executive Order 12291 but significant under the DOT policies and procedures (44 FR 11034); February 26, 1979).

This rule will not have any significant direct or indirect economic impact for four reasons. First, its requirements apply only in the case of a rail equipment accident/incident that the reporting railroad alleges to have resulted from an employee human factor. FRA statistics, based on the railroads' reports, show that there were 855 such accidents in 1987. Second, compliance with the notification requirements should not be difficult because it is accomplished by filling in a short standard form supplied by the agency. Third, the Railroad Employee Accident Statement provided for in the rule is also to be written on a short standard form, partially completed by the railroad. Fourth, the Statement is submitted at the employee's option; employees who have no interest in filling it out are not required to do so.

The benefit of the rule is that employees are informed of their rights, which is likely to result in FRA's receiving more complete information on employees' views of the causes of accidents. The cost to the railroads for completing, mailing or delivering, and maintaining these records is insignificant. Additionally, we estimate that the cost to the employees is insignificant. For these reasons, a draft regulatory evaluation has not been prepared; however, the agency invites comments on the costs expected to be incurred.

### Regulatory Flexibility Act

FRA certifies that this proposed rule will not have a significant impact on a substantial number of small entities. There are no direct or indirect economic impacts for small units of government, businesses, or other organizations. State rail agencies remain free to participate in the administration of FRA's rules, but are not required to do so.

### Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

### Paperwork Reduction Act

Public reporting burden for this collection of information is estimated to average fifteen minutes per employee notification and an average of fifteen minutes per employee statement, with an estimated total annual burden (based on an estimated 832 notifications and 416 statements) of 312 hours. All of these estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Ms. Gloria Swanson, Federal Railroad Administration, 400 Seventh Street SW., Room 8314, Washington, DC 20590; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

### List of Subjects in 29 CFR Part 225

Railroad safety, Railroad accident reporting rules.

In consideration of the foregoing, FRA proposes to amend Chapter II, Subtitle B, of Title 49, Code of Federal Regulations as follows:

### PART 225—[AMENDED]

The authority citation for Part 225 continues to read as follows (see 53 FR 28594, 28601):

Authority: 45 U.S.C. 38, 42, and 43, as amended; 45 U.S.C. 431, 437, and 438, as amended; Pub. L. 100-342, 102 Stat. 624; and 49 CFR 1.49 (c) and (m).

1. Add new 49 CFR 225.12 to read as follows:

**§ 225.12 Notice to railroad employee involved in rail equipment accident/incident attributed to employee human factor; railroad employee accident statement.**

(a) If, in reporting to FRA a "rail equipment accident/incident," as that term is defined in § 225.19(c), a railroad assigns any of the cause codes listed under "Train Operation—Human Factors" in the "FRA Guide for Preparing Accident/Incident Reports," except Cause Code 506, as the primary

cause or a contributing cause of the rail equipment accident/incident; has actual knowledge, or through reasonable inquiry should have actual knowledge, that a railroad employee was responsible, at least in part, for the act, omission, or condition cited by that railroad as the primary cause or contributing cause; and has actual knowledge of, or through reasonable inquiry should have actual knowledge of, the identity of that employee; then the railroad must, as to each employee human factor and each such employee—

(1) State in the narrative section of the rail equipment accident/incident report—

(i) The nature of the alleged employee human factor and

(ii) The identity (by name and position) of the employee alleged to have been responsible, at least in part, for the act, omission, or condition cited by that railroad as the human factor (the back of the form or a separate sheet of paper shall be used if additional space is needed); and

(2) Complete Part I, "Notice to Railroad Employee Involved in Rail Equipment Accident/Incident Attributed to Employee Human Factor," of Form FRA F 6180.78, in accordance with instructions on the form; and

(3) Hand deliver or mail first class (postage prepaid) to that employee within 45 days after the month in which the rail equipment accident/incident occurred—

(i) A copy of Form FRA F 6180.78, "Notice to Railroad Employee Involved in Rail Equipment Accident/Incident Attributed to Employee Human Factor; Railroad Employee Accident Statement," with Part I completed as to the applicable employee and accident; and

(ii) Two copies of the railroad's report to FRA on the rail equipment accident/incident involved.

(b) If, in reporting to FRA a "rail equipment accident/incident," as that term is defined in § 225.19(c), a railroad assigns any of the cause codes listed under "Train Operation—Human Factors" in the "FRA Guide for Preparing Accident/Incident Reports," except Cause Code 506, as the primary cause or a contributing cause of the rail equipment accident/incident; but after reasonable inquiry has determined that a railroad employee was not responsible, even in part, for the act, omission, or condition cited by that railroad as the primary cause or contributing cause; or after reasonable inquiry has determined that a railroad employee was responsible, at least in part, but cannot determine the identity

of that employee, then the railroad must, as to each employee human factor and each such employee, state that fact in the narrative section of the rail equipment accident/incident report.

(c) Employee accident statements are voluntary, not mandatory; however, if an employee wishes to submit a statement and assure that it will be filed with the railroad's accident/incident report, the statement must be made on Part II of Form FRA F 6180.78 (entitled "Notice to Railroad Employee Involved in Rail Equipment Accident/Incident Attributed to Employee Human Factor; Railroad Employee Accident Statement"), following the instructions printed on the form.

(d) If an employee chooses to submit an employee accident statement to FRA, all of the employee's statements in the Railroad Employee Accident Statement

must be true and correct to the best of the employee's knowledge and belief. Under sections 3(a) and 15 of the Rail Safety Improvement Act of 1988, any person who willfully files a false Railroad Employee Accident Statement with FRA is subject to a civil penalty of up to \$10,000, and where the willful violation is also grossly negligent or involves a pattern of repeated violations that creates an imminent hazard of death or injury to persons or has caused death or injury, a penalty not to exceed \$20,000 per violation may be assessed. Additionally, any person who knowingly and willfully files a false Railroad Employee Accident Statement is subject to a \$5,000 fine, or up to two years' imprisonment, or both, under the Federal Railroad Safety Act of 1970 (45 U.S.C. 438(e)).

2. Revise 49 CFR 225.27(a) to read as follows:

**§ 225.27 Retention of records.**

(a) Each railroad must retain the logs, supplementary records and annual summaries required by § 225.25 for at least 5 years after the end of the calendar year to which they relate and the written notices to employees required by § 225.12 for at least 2 years after the end of the calendar year to which they relate.

\* \* \* \* \*

Issued in Washington, DC, on November 28, 1988.

John H. Riley,  
Administrator.

[Editorial Note: The following appendix will not appear in the Code of Federal Regulations.]

**Appendix—Notice to Railroad Employee Involved in Rail Equipment Accident/Incident  
Attributed to Employee Human Factor; Railroad Employee Accident Statement**

**PART I - NOTICE TO RAILROAD EMPLOYEE INVOLVED IN RAIL EQUIPMENT  
ACCIDENT/INCIDENT ATTRIBUTED TO EMPLOYEE HUMAN FACTOR  
(TO BE COMPLETED BY RAILROAD INVOLVED)**

Name of Reporting Railroad	Railroad Accident/Incident No. and Location	Date of Accident/Incident (month, day, year)
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Check the Cause Code Applicable to this Employee

Cause Codes Listed on Accident/Incident Report (State what each cause code stands for.)

Primary Cause:

Number	Meaning
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Contributing Cause:

Number	Meaning
--------	---------

Employee's Name (First, middle, last)	Job Title on Date of Accident
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Employee's Address or RFD No. (include apt. no., if any)	City	State	Zip
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**Notice to Employee**

This railroad, in submitting its Rail Equipment Accident/Incident Report to the Federal Railroad Administration (FRA) on the accident described above, has identified you as being responsible, at least in part, for an act, omission, or condition cited by the railroad as the primary cause or a contributing cause of the accident. (For the railroad's specific allegations, please see above on this form and the report itself, which is enclosed in duplicate, particularly the narrative section.)

Under FRA safety regulations (49 CFR 225.12), you may submit a statement to FRA explaining any factors that you believe caused or contributed to the accident. You are not required to submit this statement to FRA; however, if you choose to make such a statement, you must do so in the following way:

1. Fill in Part II of this form, "Railroad Employee Accident Statement," according to the instructions on the form;
2. Attach one copy of the railroad's Rail Equipment Accident/Incident Report on this accident; and
3. Mail the entire form (Parts I and II), with one copy of the railroad's report, continuation pages (if any), and any other supporting documents, to: Office of

Safety (RRS-22), Federal Railroad Administration, 400 Seventh Street, SW., Washington, DC 20590.

FRA's time limit for filing such a statement is 35 days from the date that this notice was mailed or hand delivered to you. FRA suggests that you keep one copy of the railroad's report for your records and that you make and keep a copy of your statement and any other supporting material submitted with it.

Signature of Railroad Representative

Title

Date of Mailing or Hand Delivery to Employee

**PART II—RAILROAD EMPLOYEE  
ACCIDENT STATEMENT (TO BE  
COMPLETED BY EMPLOYEE)**

Explain any factors that you believe caused or contributed to the accident described above. Please print or type. (If more room is needed, attach one or more additional pieces of paper.) Also, please attach to this form one copy of the railroad's Rail Equipment Accident/Incident Report on this accident.

*Attention—This Statement Must be Signed (Otherwise it will be returned to the employee.)*

Any person who willfully files a false Railroad Employee Accident Statement with FRA is subject to a civil penalty of up to \$10,000. Sections 3(a) and 15 of the Rail Safety Improvement Act of 1988. Any person who knowingly and willfully files a false Railroad Employee Accident Statement is subject to a \$5,000 fine or up to two years' imprisonment, or both. Federal Railroad Safety Act of 1970, 45 U.S.C. 438(e).

I have carefully read this statement and confirm that it is true and correct to the best of my knowledge and belief.

Signature of employee

Date Mailed to FRA

Telephone Numbers:

Home: (—) —————

Work: (—) —————

Form FRA F 6180.78 (9/88)

[FR Doc. 88-27721 Filed 11-30-88; 8:45 am]

BILLING CODE 4910-06-M

# Notices

Federal Register

Vol. 53, No. 231

Thursday, December 1, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Federal Grain Inspection Service

#### Designation Renewal of the States of Minnesota (MN) and Mississippi (MS)

**AGENCY:** Federal Grain Inspection Service (Service), USDA.

**ACTION:** Notice.

**SUMMARY:** This notice announces the designation renewal of the Minnesota Department of Agriculture and the Mississippi Department of Agriculture and Commerce as official agencies responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act).

**EFFECTIVE DATE:** January 1, 1989.

**ADDRESS:** James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454.

**FOR FURTHER INFORMATION CONTACT:** James R. Conrad, telephone (202) 447-8525.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service announced that Minnesota's and Mississippi's designations terminate on December 31, 1988, and requested applications for official agency designation to provide official services within specified geographic areas in the June 30, 1988, *Federal Register* (53 FR 24753). Applications were to be postmarked by August 1, 1988. Mississippi was the only applicant for designation in its area and applied for designation renewal in the entire area currently assigned to that agency. There were four applications for the Minnesota designation. Minnesota

applied for designation renewal for inspection and weighing functions in the entire area currently assigned to that agency. The other three applicants for designation were: David N. Puetz, dba Licensed Inspections for Minnesota, for inspection only designation for any portion of Minnesota; Aberdeen Grain Inspection, Inc., for inspection only designation in two counties in southwest Minnesota; and North Dakota Grain Inspection Service, Inc.; for inspection only designation for approximately a 3 county area due east of Fargo, North Dakota, along the west central border of Minnesota.

The Service announced the applicant names in the September 1, 1988, *Federal Register* (53 FR 33828) and requested comments on the applicants for designation. Comments were to be postmarked by October 18, 1988; no comments were received regarding Mississippi's designation renewal. A total of 18 comments were received regarding the designation of an official agency in the State of Minnesota. Fourteen comments, submitted by grain firms were received in favor of North Dakota Grain Inspection Service Inc. Several of these commenters expressed concerns regarding the proximity of their grain firms to, respectively, North Dakota Grain Inspection Service, Inc. and the Minnesota specified service points. Commenters stated that the location of these Agencies impact on the timeliness and costliness of services. Four comments were received in favor of Minnesota which were submitted by grain trade organizations.

The Service has evaluated Minnesota's operation with regard to the designation criteria in the Act and comments received. The Service has not found any deficiencies that would indicate that Minnesota fails to meet the designation criteria to perform official services in the entire geographic area for which the agency applied and that would serve as a basis for not renewing its designation to perform official services in the geographic area currently assigned to Minnesota.

Minnesota's fee schedules previously have been approved by FGIS as reasonable and nondiscriminatory. Additionally, the Service has determined that Minnesota currently provides official services in a timely manner consistent with the Act and the regulations.

The Service evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act; and, in accordance with section 7(f)(1)(B), determined that Mississippi is able to provide official services in the geographic area for which the Service is renewing their designation. The Service has also determined that Minnesota is better able than any other applicant to provide official services in the geographic area for which the Service is designating it. Effective January 1, 1989, and terminating December 31, 1991, Minnesota and Mississippi will provide official inspection and Class X or Class Y weighing services in their specified geographic area, as previously described in the June 30 *Federal Register*.

Interested persons may obtain official services by contacting the agencies at the following telephone numbers: Minnesota at (612) 341-7190, Mississippi at (601) 762-8141.

Pub. L. 94-582, 90 Stat. 2867, as amended. (7 U.S.C. 73 *et seq.*)

Date: November 28, 1988.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 88-27629 Filed 11-30-88; 8:45 am]

BILLING CODE 3410-EN-M

#### Request for Comments on Designation Applicants in the Geographic Area Currently Assigned to the Ohio Valley (IN) and Quincy (IL) Agencies

**AGENCY:** Federal Grain Inspection Service (Service), USDA.

**ACTION:** Notice.

**SUMMARY:** This notice requests comments from interested parties on the applicants for official agency designation in the geographic areas currently assigned to James L. Goodge, Sr., dba Ohio Valley Grain Inspection (Ohio Valley), and Anthony L. Marquardt dba Quincy Grain Inspection & Weighing Service (Quincy).

**DATE:** Comments must be postmarked on or before January 17, 1989.

**ADDRESS:** Comments must be submitted in writing to Lewis Lebakken, Jr., RM, FGIS, USDA, Room 0628 South Building, P.O. Box 96454, Washington, DC 20090-6454. *Telemail* users may respond to [LLEBAKKEN/FGIS/USDA] telemail. *Telex* users may respond as follows:

TO: Lewis Lebakken, TLX: 7607351,  
ANS:FGIS UC.

All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, SW., during regular business hours (7 CFR 1.27(b)).

**FOR FURTHER INFORMATION CONTACT:** Lewis Lebakken, Jr., telephone (202) 475-3428.

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service requested applications for official agency designation to provide official services within specified geographic areas in the October 5, 1988, Federal Register (53 FR 39121). Applications were to be postmarked by November 3, 1988. Ohio Valley and Quincy were the only applicants for designation in those areas and each applied for designation renewal in the entire area currently assigned to that agency.

This notice provides interested persons the opportunity to present their comments concerning the applicants' designation. Commenters are encouraged to submit reasons for support or objection to these designation actions and include pertinent data to support their views and comments. All comments must be submitted to the Resources Management Division, at the above address.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the Federal Register, and the applicants will be informed of the decision in writing.

Pub. L. 94-582, 90 Stat. 2887, as amended. (7 U.S.C. 71 *et seq.*)

Date: November 28, 1988.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 88-27630 Filed 11-30-88; 8:45 am]

BILLING CODE 3410-EN-M

# **Request for Designation Applicants To Provide Official Services in the Geographic Area Currently Assigned to the Champaign (IL) and Springfield (IL) Agencies**

**AGENCY:** Federal Grain Inspection Service (Service), USDA.

**ACTION:** Notice.

**SUMMARY:** Pursuant to the provisions of the U.S. Grain Standards Act, as Amended (Act), official agency

designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of two agencies will terminate, in accordance with the Act, and requests applications from parties interested in being designated as the official agency to provide official services in the geographic area currently assigned to the specified agencies. The official agencies are the Champaign-Danville Grain Inspection Departments, Inc. (Champaign), and Glen Wallace dba Springfield Grain Inspection Department (Springfield).

**DATE:** Applications must be postmarked on or before January 3, 1989.

**ADDRESS:** Applications must be submitted to James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454. All applications received will be made available for public inspection at this address located at 1400 Independence Avenue, SW., during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** James R. Conrad, telephone (202) 447-8525.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act specifies that the Administrator of the Service is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

Champaign, located at 527 E. Main Street, Danville, IL 61832; and Springfield, located at 1301 North Fifteenth Street, Springfield, IL 62702; were each designated under the Act as an official agency on June 1, 1986, to provide official inspection functions.

Each official agency's designation terminates on May 31, 1989. Section 7(g)(1) of the Act states that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Champaign, in the States of Illinois and Indiana, pursuant to section 7(f)(2) of the act, which may be assigned

to the applicant selected for designation is as follows:

Bounded on the North by the northern Iroquois County line east to the Illinois-Indiana State line; the Illinois-Indiana State line south to U.S. Route 24; U.S. Route 24 east to U.S. Route 41;

Bounded on the East by U.S. Route 41 south to the southern Fountain County line; the Fountain County line west to Vermillion County (in Indiana); the eastern Vermillion County line south to U.S. Route 36;

Bounded on the South by U.S. Route 36 west into Illinois, to the Douglas County line; the eastern Douglas and Coles County lines; the southern Coles County line; and

Bounded on the West by the western Coles and Douglas County lines; the western Champaign County line north to Interstate 72; Interstate 72 southwest to the Piatt County line; the western Piatt County line; the southern McLean County line west to a point 10 miles west of the western Champaign County line; a straight line running north to U.S. Route 136; U.S. Route 136 east to Interstate 57; Interstate 57 north to the Champaign County line; the northern Champaign County line; the western Vermillion (in Illinois) and Iroquois County lines.

The following locations, all in Illinois, outside of the above contiguous geographic area, are part of this geographic area assignment: Moultrie Grain Association, Cadwell, Moultrie County; Tabor and Company, Weedman Grain Company, and Pacific Grain Company, all in Farmer City, Dewitt County; Moultrie Grain Association, Lovington, Moultrie County; and Monticello Grain Company, Monticello, Piatt County; (all located inside Decatur Grain Inspection, Inc.'s area).

Exceptions to Champaign's assigned geographic area are the following locations inside Champaign's area which have been and will continue to be serviced by the following official agencies:

1. Paris Illinois Grain Inspection: Tabor Grain Co., Newman, Douglas County, Illinois; Tabor Grain Co., Oakland, Coles County, Illinois; and Cargill, Inc., Dana, Vermillion County, Indiana; and

2. Titus Grain Inspection, Inc.: Boswell Grain Company, Boswell, Benton County, Indiana; Dunn Grain, Dunn, Benton County, Indiana; York Richland Grain Elevator, Inc., Earl Park, Benton County, Indiana; and Raub Grain Company, Raub, Benton County, Indiana.

The geographic area presently assigned to Springfield, in the State of

Illinois, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

Bounded on the North by the northern Schuyler, Cass, and Menard County lines; the western Logan County line north to State Route 10; State Route 10 east to the west side of Beason;

Bounded on the East by a straight line from the west side of Beason southwest to Elkhart on Interstate 55; a straight line from Elkhart southeast to Stonington on State Route 48; a straight line from Stonington southwest to Irving on State Route 16;

Bounded on the South by State Route 16 west to Interstate 55; a straight line from the junction of Interstate 55 and State Route 16 northwest to the junction of State Route 111 and the Morgan County line; the southern Morgan and Scott County lines.

Bounded on the West by the western Scott, Morgan, Cass, and Schuyler County lines.

The following locations, outside of the above contiguous geographic area, are part of this geographic area assignment: East Lincoln Farmers Grain Co., Lincoln, Logan County (located inside Bloomington Grain Inspection Department's area); Chestervale Elevator Company, Chestervale, Logan County (located inside Decatur Grain Inspection, Inc.'s area); and Pillsbury Co., Florence, Pike County (located inside Quincy Grain Inspection & Weighing Service's area).

Interested parties, including Champaign and Springfield, are hereby given opportunity to apply for official agency designation to provide the official services in each geographic area, as specified above, under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in each specified geographic area is for the period beginning June 1, 1989, and ending May 31, 1992. Parties wishing to apply for designation should contact the Review Branch, Compliance Division, at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

Pub. L. 94-562, 90 Stat. 2887, as amended. (7 U.S.C. 71 *et seq.*)

Date: November 28, 1988.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 88-27831 Filed 11-30-88; 8:45 am]

BILLING CODE 3410-EN-M

## Forest Service

### Record of Decision; California-Oregon Transmission Project; Final Environmental Impact Statement; Pacific Southwest Region

**AGENCY:** Forest Service, USDA.

**ACTION:** Record of decision.

#### Background

The Secretary of Energy, through Western Area Power Administration (Western), and the Transmission Agency of Northern California (TANC) developed a proposal to construct facilities that would allow mutually beneficial power sales between the Pacific Northwest and California. The proposal, known as the California-Oregon Transmission Project (COTP), would have the purpose of expanding the bidirectional capability of the Pacific Northwest-Pacific Southwest Intertie transmission system and help serve California's need for economical power, would facilitate the Pacific Northwest's desire to sell surplus power, and would meet the need for maintaining and increasing the reliability of the existing transmission system.

The California-Oregon Transmission Project (COTP) proposal is to construct and operate approximately 340 miles of transmission lines, three substations, a series compensation station, communication facilities, and to modify two existing substations. The specific portions of this proposal that involve National Forest System lands include:

Construction of a new 500 KV AC transmission line and associated facilities from the California-Oregon border area to the proposed Olinda Substation near Redding, California, approximately 58 miles of which crosses National Forest System lands.

Modification of existing and construction of a new communication system and associated facilities on National Forest System lands.

The Department of Energy, Western, and the Transmission Agency of Northern California, were designated as lead agencies for the development of the final EIS/EIR for the California-Oregon Transmission Project (DOE/EIS-0128). The USDA Forest Service was a cooperating agency in the development of this joint EIS/EIR.

#### Decision

Based on the analysis and information contained in the Draft, Supplement to the Draft, and Final Environmental Impact Statement (EIS), it is my decision to select the North D Alternative for the 500 KV powerline and associated improvements on National Forest

System lands. It is also my decision to authorize the construction of the project under a Special-Use Permit with appropriate clauses and stipulations, as shown in the attached exhibit, and to issue an easement for the right-of-way covering the operation and maintenance of the transmission line and associated facilities after construction is completed.

The North D Alternative consists of the following route segments discussed in the EIS/EIR which cross National Forest System lands between the Oregon border and Redding, California (a general description of the route follows):

N-10K	N-10L
N-10M1	N-10M2(A)
N-10M2(A1)	North 2B
N-10Alt5(B)	N-10Alt5(D)
N-10Alt5(C)	N-7Alt1(A)
N-7Alt1(B)	North 3J
N-8A(3)	N-8C
N-8Alt2(A)	

Alternative North D crosses onto National Forest System lands southeast of the town of Newell in Modoc County, near Casuse Mountain. It then travels in a southwesterly direction across portions of the Doublehead and Big Valley Districts of the Modoc National Forest, crossing into Siskiyou County near Border Mountain. The route crosses onto the McCloud District of the Shasta-Trinity National Forest about two miles southwest of Snell Butte. About two miles southeast of Hambone Butte, the route crosses about one-half mile of the Shasta National Forest administered by the Hat Creek District of the Lassen National Forest, where it turns and proceeds in a westerly direction.

Approximately three miles west of Bear Mountain Lookout, the route turns south toward Dead Horse Summit, turning to the southwest again about one mile southeast of Curtis Meadows, where it crosses Highway 89. From this point it crosses mostly private lands, crossing into Shasta County about three miles before it reaches Grizzly Peak. From Grizzly Peak it turns to the south, staying to the east side of Little Meadows. The route crosses onto the Shasta Lake District of the Shasta-Trinity National Forest near Stump Creek Butte, and continues south. After crossing private lands in the Flat Woods area, the route crosses about two miles of National Forest land near Hogback Mountain and then proceeds to the south across private lands toward Redding, California.

#### Routing Alternatives Considered

Four major routes, North A, B, C, and D, were analyzed in the Draft EIS/EIR. Alternative North A travels generally south down the east side of Shasta.

Valley, then southeast (staying north and east of Mount Shasta) to about six miles past Ash Creek Butte, where it then turns south toward Grizzly Peak. Alternatives North B and North C both come south through the Butte Valley area. North B passes near the town of Macdoel, while North C stays to the east of Dorris. Both join just to the northeast of Tennant, and continue south to the Ash Creek Butte area, where they then follow the same route as North A. All routes have the same location from Grizzly Peak to the forest boundary. To arrive at the point where the four major routes were analyzed in the EIS, a full range of route segments and alternatives were considered on National Forest System lands. Routing guidelines which took into account engineering, earth sciences, water quality, biological resources, visual resources, socioeconomic, land status, land use, cultural resources, and electrical/magnetic effects were applied in order to develop preliminary routes. After public review, revised preliminary alternative routes were identified, and a second round of route review and revision was initiated.

Additional modifications and adjustments were made during the impact assessment. Multidisciplinary comparisons were done between the different route alternatives in order to identify the preliminary environmentally superior as well as the preliminary project preferred alternatives in the Draft EIS/EIR, issued in November, 1986.

Public and Agency comments on the Draft EIS/EIR resulted in a Supplement to the Draft, issued in June of 1987. The Supplement was issued in order to get public review of proposed new routing options and an alternate Southern Oregon Switching Station site. Seven new route options within Alternative North D north of Redding were analyzed in the Supplement in a similar manner as were the routes in the Draft EIS/EIR.

The Final EIS/EIR incorporated all analyses made for the Draft EIS/EIR and the Supplement to the Draft, and identified the environmentally superior and project preferred alternatives for the COTP. The Forest Service participated in and reviewed the route selection process throughout, and my decisions reflect that involvement in the route selection process, as well as the impact assessment and the review of public comment as described below.

#### Other Alternatives Considered

A full range of alternatives were considered for the entire project, as described in the Phase-II Report of Volume 2A of the draft EIS/EIR,

supplement to the draft, and Section 1.2.2 of Volume I of the final EIS/EIR. Numerous routes within the basic alternatives were also considered, as described in the EIS/EIR sections listed above. Some other alternatives considered are as follows:

**No Action**—The no action alternative would have no environmental impacts in the short run. In the long term, participating utilities would undertake other transmission construction projects, and the operation of the western region transmission system would continue to be subject to the effects of outages of the existing AC intertie and operating restrictions on the interconnected system.

**Upgrade Existing 500 KV Pacific AC Transmission Intertie**—This alternative considered upgrading two existing 500 KV Pacific AC Intertie lines to provide two 2,400 MW AC lines, an increase of 800 MW on each line. This alternative would have fewer environmental impacts, but is rejected based on physical, economic, and outage/reliability problems.

**DC Transmission**—This alternative would replace the COTP with a second DC transmission line. The environmental impacts of this alternative would be similar to those from the selected alternative. This alternative would require multi-tap DC technology for the multiple points of delivery for the COTP, and would have substantially higher costs.

**Parallel Existing Intertie Lines**—This alternative considered using the existing right-of-way of the Pacific AC Intertie lines. This alternative does not meet the reliability criteria requiring separation of the new line sufficiently from the two existing lines.

**East of Existing Intertie Lines**—These options considered placing the COTP to the east of the existing Pacific AC Intertie lines. This would require that the COTP cross the existing lines twice north of Olinda Substation. These options were not considered further due to system reliability concerns and technological difficulties associated with the crossovers.

**Underground Construction**—Underground construction was considered, but rejected due to economics, reliability, and feasibility. Underground transmission would have a greater environmental impact in terms of soil disturbance. Underground transmission of 500 KV lines for long distances such as this is still an unproven technology.

**Nontransmission Alternatives**—A variety of nontransmission alternatives were considered, as discussed in section 2.5.2 of the draft EIS. Many

combinations of generation and conservation technologies and programs could be developed to provide 1,600 MW of additional capacity to the COTP participants. Generation technologies which could individually or in combination, be compared to the Combined Projects include the following conventional large central station facilities and renewable resource or preferred technology facilities:

**Conventional Generation Technologies**—Coal-fired; nuclear; combustion turbines; combined cycle (oil or natural gas); large hydroelectric (new dam and reservoir); refurbishment of existing oil and gas-fired capacity; compressed air energy storage; pumped storage hydroelectric.

**Renewable and Preferred Technologies**—Cogeneration; biomass (wood residue, agricultural waste, municipal solid waste); small hydroelectric; photovoltaic; solar thermal; geothermal; wind turbines; solar space heating and cooling; residential, commercial, and industrial load conservation; load management.

These nontransmission alternatives would not provide for bidirectional capability, and would not facilitate the Pacific Northwest's desire to distribute surplus power.

#### Reasons for Selection

Impact assessment for the EIS/EIR identified some major resource impacts and concerns for the route segments on National Forest System lands. Major environmental issues pertinent to my decision are the protection of old growth timber, total amount of commercial timber impacted, protection of sensitive wildlife species habitat, minimizing resource impacts in geologically sensitive areas, and that the route best meets public demands for reliable bulk electrical power transmission.

Old growth timber areas provide important habitat for wildlife species dependent on old growth forests, as well as ecological diversity, and of the routing alternatives considered, North D minimizes impacts to old growth timber. Total commercial timber resources impacted by each alternative were analyzed, and Alternative North D would impact less commercial timber than alternatives A, B, and C.

Protection of sensitive wildlife species and their habitats was also an important consideration. In particular, impacts to sensitive species such as Goshawk and spotted owls were analyzed during the impact assessment. The North D alternative route avoids spotted owl network territories designated to maintain viability of the species, and

minimizes impacts to Goshawks. A variety of other important wildlife areas are crossed, but impacts are adequately mitigated through use of seasonal construction activity closures and road management, as outlined in the EIS/EIR.

Alternative A would have major impacts associated with possible line collisions by the bald eagle and other sensitive raptors. Alternative A also passes near a bald eagle nest territory, and would pass through a spotted owl management area near the McCloud River. Alternative B passes within a mile of bald eagle winter roost and a nest near Coleman Lake and the Klamath River. Collision potential is high with this alternative as well, and the same spotted owl management area impacted by alternative A would also be impacted by alternatives B and C. Alternative C also impacts bald eagle roost sites near Bear Valley, and moderate collision potential exists for eagles moving across the line to Butte Valley foraging areas. Alternative D passes on the east side of the Klamath Basin, which also supports high populations of migratory waterfowl and wintering bald eagles, but collision potential here is not significant because use of the corridor area is low and topography shields birds from collisions. Alternative North D passes through the Glass Mountain Known Geothermal Resource Area, as well as the Giant Crater Lava Flow area, but careful placement of towers will mitigate any impacts or concerns regarding lava tube collapse, and the transmission line should not effect or be affected by the known geothermal resource area. Alternatives A, B, and C all would be subject to potential geologic risks associated with Mount Shasta and earthquake faults in the Tennant area.

Alternative North D also minimizes impacts on recreation and visual resources. Alignment and design considerations reduce the visual impact (see mitigations listed below), and crossing of high use scenic roads such as the Powder Hill Road to Medicine Lake is avoided. Alternatives A, B, and C cross through the visually sensitive areas of Shasta Valley and Butte Valley.

#### Issues Raised by Public Comment

Major issues pertinent to National Forest System lands were raised by the public during the review periods, as described below. Many of the route options presented in the Supplement to the Draft EIS/EIR were developed in response to these issues.

A major concern of many commentators was the overall impact on timberland. The powerline right-of-way represents a permanent loss of productive timberland,

and many landowners and communities in the study area are economically dependent on the timber resource. Alternative North D was selected in part because of fewer overall impacts on forest lands. For instance, route segment N-10M2 is located on less productive timberland than N-10 Alt.5. The loss of timber on the National Forests represents less than one-half of one percent reduction in the long-term sustained yield and allowable cut for the affected Forests.

Transmission system reliability and its effects on the location of the routing alternatives was another major issue. The Forest Service has addressed the need for separation from the existing intertie based on concerns for system reliability and good engineering and technological considerations related to minimize the potential for a three line outage. Sufficient separation of the COTP from the existing intertie is an issue where fire has significant potential for causing a simultaneous three line outage. This aspect of the transmission reliability issue is adequately resolved through selection of the N-10M route option (a route option closer to the existing intertie than originally proposed in the Draft EIS/EIR), and with the implementation of a fuels management plan and fire response plan. The fuels management and fire response plans will be developed jointly by TANC and the Forest Service. Separation for other reasons such as natural or man-caused disasters was also considered in assessing the need for separation from the existing intertie.

A second aspect of transmission system reliability relates to the feasibility of crossing the two existing intertie lines with this powerline. Proposals to cross the existing intertie and put the new line to the east were carefully analyzed, but were not considered feasible because of the technical problems with crossovers. Crossing the existing intertie results in reduced reliability by having all three lines in a position where a single event could cause a three line outage at the point of crossover.

Visual impacts of the transmission line were also a major public concern. Routing guidelines emphasized minimizing visual impacts through careful siting. Full application of measures to reduce the visibility of the towers and conductors, as well as selective clearing of the right-of-way, will be done to minimize the visual impacts.

#### Environmentally Preferred Alternative

The environmentally preferred alternative on National Forest System

lands is alternative North D. The No Action and Nontransmission alternatives, while having no or little impact in the short term, would both lead in the long term to proposals for additional power and transmission projects that would have at least the same, or significantly greater impact on National Forest System lands. The North D route, as developed through this EIS/EIR and with the required mitigations, is the preferred route in terms of having lower overall impact on the human environment.

#### Mitigation

All practicable means to avoid or minimize environmental harm from the selected alternative have been adopted. The full list of mitigation measures adopted are listed in section 1.1.5 of the final EIS. The following is a summary of the key resource areas that are mitigated:

Threatened, Endangered, and Sensitive plant and animal species: Construction of new access roads will be minimized in stream drainages which support special-status aquatic species such as Redband Trout, or in areas that support sensitive plants or threatened, endangered, or sensitive wildlife species; preclude access roads in sensitive areas until after biological surveys are completed and mitigation coordinated with appropriate agencies; avoid siting of transmission line towers, access roads and/or construction work areas in those unique or sensitive plant communities to the maximum extent possible; avoid disturbance to nests and dens; restrict activities during breeding periods that could disturb species sufficiently to cause reproductive failure and other important activity timeframes.

Floodplains and wetlands (Ref. Executive Order 11990): Site structures to span wetland areas and floodplains, place access roads outside wetland areas, and avoid use of heavy equipment in wetlands.

Loss of timberland due to right-of-way clearing: Use directional felling on right-of-way; minimize locating right-of-way on ridgetops where potential windthrow is maximized; emphasize selective clearing removing only tall growing vegetation which could interfere with the conductors; prepare a vegetation management plan which will consider clearing requirements and long-term right-of-way management needs; off-site mitigation such as reforestation or other timber stand improvement treatments on timber sites currently not in production.

Visual resource management: Use non-specular conductors; minimize

vegetation clearing along roads and highways, rivers, trails and residential areas; minimize sitings of towers on ridgelines/hilltops; feather edges of right-of-way clearing; use opaque porcelain insulators; darken tower steel will be used where it can be expected to reduce impacts.

New road construction: Minimize new access road construction; close all roads not needed for long-term maintenance activities.

Archaeological resource protection: Site structures to span sites; plan access roads to avoid these sites and monitor construction to minimize impact; if site cannot be avoided, scientific excavation to recover data or stabilization and protection of sites; consult with Native Americans concerning potential mitigation measures; if cemeteries cannot be avoided, arrange for reburial.

The Forest Service will, through permit administration, monitor compliance to ensure that the terms of the permit are met. A Compliance Monitoring Plan developed by the proponent (TANC) and the lead agency (Western) will track responsibility and accomplishment of mitigation for the entire project. The lead agency will ensure that the applicable mitigation measures are included in construction contracts. Construction inspectors for the lead agency will verify that the mitigation measures are implemented.

Mitigation of impacts of the selected alternative on Floodplains and Wetlands is addressed in the final EIS, Volume I, Section 1.1.5. All potential impacts to wetlands on National Forest System lands are fully mitigable. A Memorandum of Agreement between Western Area Power Administration, the Transmission Agency of Northern California, the California State Historic Preservation Officer, and the Advisory Council on Historic Preservation specifies the process for documenting and fully mitigating archaeological and cultural resource impacts for the project.

Impacts to threatened and endangered species on National Forest System lands are fully mitigable as described in the mitigation section of the final EIS. The Final Biological Opinion by the U.S. Fish and Wildlife Service requires that prior to the season of construction, a survey be conducted for potential bald eagle nest sites near the Pit River crossing on National Forest System lands, and for potential peregrine falcon use of a site at Horse Mountain in the Klamath Basin. Shield wires will be marked at all Pit River crossings with aviation marker balls to increase their visibility to bald eagles and peregrine falcons. All disturbed sites will be repeat seeded as

necessary until restored to pre-project conditions.

This decision is subject to appeal in accordance with the provisions of 36 CFR 211.18.

Dated: November 15, 1988.

Paul F. Barker,  
Regional Forester.

[FR Doc. 88-27701 Filed 11-30-88; 8:45 am]

BILLING CODE 3410-11-M

### **Bucks Creek Allotment Management Plan, Plumas National Forest, Plumas County, CA; Intent To Prepare an Environmental Impact Statement**

The Department of Agriculture, Forest Service will prepare an environmental impact statement for the development of a new Allotment Management Plan for the Bucks Creek Allotment on the Oroville Ranger District. The Mill Creek Unit, which is in the Bucks Lake Wilderness, is within this allotment.

A range of alternatives for this plan will be considered. One of these will consider continued use, the no action alternative, as per the existing Allotment Management Plan. Another alternative will consider reducing the total number of cattle using the Mill Creek Unit of the allotment. A third alternative to consider will be to reduce the season of use in the Mill Creek Unit. Another possible alternative to consider will be the elimination of the Mill Creek Unit of the allotment and replacement of the animal unit months in another grazing area outside the wilderness.

Federal, State, and local agencies; range permittee; and other individuals or organizations who may be interested in or affected by the decision will be invited to participate in the scoping process. This process will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a previous environmental review.

Mary J. Coulombe, Forest Supervisor, Plumas National Forest, Quincy, California, is the responsible official.

The analysis is expected to take about 9 months. The draft environmental impact statement should be available for public review by September 1989. The final environmental impact statement is scheduled to be completed by June 1990.

Written comments and suggestions concerning the analysis should be sent to Mary J. Coulombe, Forest Supervisor, Plumas National Forest, P.O. Box 11500, Quincy, California 95971, by January 15, 1989.

Questions about the proposed action and environmental impact statement should be directed to Jack Horner, Resource Officer, Oroville Ranger District, Plumas National Forest, phone 916-534-6500.

Date: November 18, 1988.

Mary J. Coulombe,  
Forest Supervisor.

[FR Doc. 88-27650 Filed 11-30-88; 8:45 am]

BILLING CODE 3410-11-M

### **Duncan and Sunflower Timber Sales, Tahoe National Forest, Placer County, CA; Intent to Prepare an Environmental Impact Statement**

The Department of Agriculture, Forest Service will prepare an environmental impact statement (EIS) for a proposal to harvest and regenerate timber in portions of the former Duncan Canyon Inventoried Roadless Area on the Foresthill Ranger District, Tahoe National Forest, Placer County, California.

A range of alternatives for these timber sales will be considered. One of them will be the no action alternative. Various intensities for road construction, timber harvesting and regeneration within the area will be analyzed. The different timber sale alternatives will address different resource values such as visual quality, recreation, wildlife, and timber.

Comments from other Federal, State and local agencies, organizations and individuals who may be interested in, or affected by the decisions are being solicited to identify significant issues. Written comments concerning the project should be directed to Richard A. Johnson, District Ranger, Foresthill District, 22830 Foresthill Rd., Foresthill, California 95631.

Comments should be received by January 15, 1988 to receive timely consideration in the development of the draft EIS.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by April 1989. At that time EPA will publish a notice of availability of the draft EIS in the Federal Register.

The comment period on the draft EIS will be 45 days from the date of the EPA's notice of availability in the Federal Register. It is very important that those interested in the management of the former Duncan Canyon Inventoried Roadless Area participate at that time. To be the most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merits

of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions, *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978). Such decisions have also established that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final EIS, *Wisconsin Heritages, Inc. v. Harris*, 490 F Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this requirement is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

After the end of the comment period on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final EIS. The final EIS is expected to be completed by July 1989. In the final EIS, the Forest Service is required to respond to comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the EIS and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official, who is the Tahoe National Forest Supervisor, will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal under standard agency procedures (36 CFR 211.18).

Date: November 21, 1988.

Geri Bergen Larson,

Forest Supervisor.

[FR Doc. 88-27700 Filed 11-30-88; 8:45 am]

BILLING CODE 3410-11-M

## DEPARTMENT OF COMMERCE

### Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Oceanic and Atmospheric Administration.

*Title:* Flood Damage Report.

*Form Number:* Weather Service Form E-7.

*Type of Request:* Reinstatement of a previously approved collection.

*Burden:* 1500 respondents; 4500 reporting hours; average hours per response—3 hours.

*Needs and Uses:* NOAA requests information on flood damages from local and state officials, or from others affected by the event. NOAA and other agencies use the information to improve flood warnings, flood control projects, and related activities.

*Affected Public:* All groups and individuals.

*Frequency:* On occasion.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Francine Picoult, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Date: November 22, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88-27621 Filed 11-30-88; 8:45 am]

BILLING CODE 3510-CW-M

### Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Oceanic and Atmospheric Administration.

*Title:* Application for a Federal Fisheries Permit for Atlantic Swordfish.

*Form Number:* None.

*Type of Request:* Request for extension and revision of a currently approved collection.

*Burden:* 700 respondents; 350 reporting hours; average hours per response—.5 hours

*Needs and Uses:* U.S. vessels that will fish for, possess, retain, or land Atlantic Swordfish for sale, trade, or barter must obtain a Federal Fisheries Permit to operate in the U.S. Exclusive Economic Zone. The information obtained is used for fishery enforcement and management.

*Affected Public:* Businesses or other for-profit, Small businesses or organizations.

*Frequency:* Annual.

*Respondent's Obligation:* Required to obtain a benefit.

*OMB Desk Officer:* Francine Picoult, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Date: November 22, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88-27622 Filed 11-30-88; 8:45 am]

BILLING CODE 3510-CW-M

### Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* Bureau of the Census.

*Title:* Shipper's Export Declaration for In-Transit Goods.

*Form Number:* 7513.

*Agency Approval Number:* 0607-0001.

*Type of Request:* Extension.

*Burden:* 19,500 hours.

*Number of Respondents:* Unknown (number of firms exporting from one foreign country to another through the United States).

*Avg Hours Per Response:* 15 minutes.

*Needs and Uses:* Exporters use this form to report shipments of merchandise from one foreign country to another through the United States. This is the basic source document from which the Bureau of the Census compiles the U.S. statistics on outbound in-transit shipments.

*Affected Public:* Exporters of merchandise.

*Frequency:* Monthly (automated reporting). On occasion (all others).

*Respondent's Obligation:* Mandatory.

*OMB Desk Officer:* Francine Picoult, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance

Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: November 25, 1988.

Edward Michals,

*Departmental Clearance Officer, Office of Management and Organization.*

[FR Doc. 88-27711 Filed 11-30-88; 8:45 am]

BILLING CODE 3510-07-M

### Assistant Secretary for Communications and Information

#### Advisory Committee on Advanced Television; Partially Closed Meeting

A meeting of the Commerce Advisory Committee on Advanced Television will be held December 15, 1988, 10:00 a.m. to 12:00 noon, in Room 4830, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC.

The Committee advises the Secretary on the impact of advanced television on the competitiveness of U.S. industry, what policies may be pursued to heighten the development of advanced television in the public interest, and other related issues. The meeting is scheduled to consist of a discussion of the impact of advanced television on the competitiveness of U.S. industry and matters related to the development and implementation of advanced television.

The General Session of the meeting will be open to the public and a limited numbers of seats will be available on a first-come first-served basis. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on November 2, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, that the agenda items covered in the closed session may be exempt from the provisions of the Act relating to open meetings and public participation therein because these items will be concerned with matters that are within the purview of 5 U.S.C. 552b (c)(4) and (c)(9)(B). The discussions are likely to disclose privileged or confidential commercial information and information for which premature disclosure would

likely significantly frustrate the implementation of proposed agency actions. (A copy of the determination is available for public inspection and copying in the Public Reading Room, Central Reference and Record Inspection Facility, Room 6628, Department of Commerce.)

**FOR FURTHER INFORMATION CONTACT:** Richard M. Firestone, Chief Counsel, Office of the Chief Counsel, National Telecommunications and Information Administration, Room H4717, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone 202-377-1816.

Date: November 28, 1988.

Alfred C. Sikes,

*Assistant Secretary for Communications and Information.*

[FR Doc. 88-27724 Filed 11-30-88; 8:45 am]

BILLING CODE 3510-60-M

### National Oceanic and Atmospheric Administration

#### Coastal Zone Management; Federal Consistency Appeal by Sucesion Alberto Bachman From an Objection by the Puerto Rico Planning Board

**AGENCY:** National Oceanic and Atmospheric Administration, Commerce.

**ACTION:** Request for comments.

On March 18, 1988, Sucesion Alberto Bachman (Appellant), through counsel, filed with the Secretary of Commerce (Secretary) a notice of appeal under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972 (CZMA), 16 U.S.C. 1456(c)(3)(A), and the Department of Commerce's implementing regulations, 15 CFR Part 930, Subpart H. The appeal arises from an objection by the Puerto Rico Planning Board (PRPB) to the Appellant's certification that his proposed installation of a swimmer's protection barrier at Palominos Island would be consistent with Puerto Rico's coastal management program. The PRPB's objection precludes the U.S. Army Corps of Engineers from issuing to the Appellant a permit to perform these activities pending the outcome of Appellant's appeal.

The CZMA provides that a timely objection by a state to a consistency certification precludes any Federal agency from issuing licenses or permits for the activity unless the Secretary finds that the activity is either "consistent with the objectives" of the CZMA (Ground I) or "necessary in the interest of national security" (Ground II). Section 307(c)(3)(A). To make such a determination, the Secretary must find

that the proposed project satisfies the requirements of 15 CFR 930.121 or 930.122. The Appellant requests that the Secretary override the PRPB's consistency objection based on Ground I. To make the determination that the proposed activity is "consistent with the objectives" of the CZMA, the Secretary must find that (1) the proposed activity furthers one or more of the national objectives contained in sections 302 or 303 of the CZMA; (2) the adverse effects of the proposed project do not outweigh its contribution to the national interest; (3) the proposed project will not violate the Clean Air Act or the Federal Water Pollution Control Act; and (4) no reasonable alternative is available that would permit the proposed activity to be conducted in a manner consistent with Puerto Rico's coastal management program.

Public comments are invited on the findings that the Secretary must make as set forth in the regulations at 15 CFR 930.121. Comments are due within thirty days of the publication date of this notice, and should be sent to Sydney Anne Minnerly, Attorney-Adviser, Office of General Counsel, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, 1825 Connecticut Avenue, NW., Suite 603, Washington, DC 20235. Copies of comments should also be sent to Hector F. Oliveras, Esquire, Bufete Y Notaria, Calle Vela No. 3-B, Hato Rey, PR 00917 and Jose S. Rodriguez, Puerto Rico Planning Board, Minillas Governmental Center, North Bldg., De Diego Avenue, Stop 22, San Juan, PR 00940-9985. All nonconfidential documents submitted or received in this appeal are available for public inspection during business hours at the offices of Hector Oliveras, Esquire, the Puerto Rico Planning Board, and the National Oceanic and Atmospheric Administration (NOAA) Office of General Counsel.

**FOR ADDITIONAL INFORMATION CONTACT:** Sydney Anne Minnerly, Attorney-Adviser, NOAA Office of General Counsel, U.S. Department of Commerce, 1825 Connecticut Avenue, NW., Suite 603, Washington, DC 20235, (202) 673-5200.

Date: November 23, 1988.

B. Kent Burton,

*Assistant Secretary for Oceans and Atmosphere.*

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

[FR Doc. 88-27720 Filed 11-30-88; 8:45 am]

BILLING CODE 3510-08-M

**Coastal Zone Management; Federal Consistency Appeal by Donald A. Benson from an Objection by the Alaska Division of Governmental Coordination**

**AGENCY:** National Oceanic and Atmospheric Administration, Commerce.

**ACTION:** Notice of appeal and dismissal of appeal.

On April 27, 1988, the Secretary of Commerce received a Notice of Appeal and supporting data and information from Mr. Donald A. Benson. Mr. Benson appealed to the Secretary under section 307(c)(3)(A) of the Coastal Zone Management Act (CZMA) and the Department's implementing regulations, 15 CFR Part 930, Subpart H. The appeal arises from an objection by the Alaska Division of Government Coordination to Mr. Benson's consistency certification for U.S. Army Corps of Engineers (Corps) Permit No. N-820189, Knik River 6, modification and time extension to extend a previously constructed airplane runway, to dredge a seaplane basin, and to construct additional service areas and access roads. The proposed construction is for a privately owned airport located on the Glenn Highway, six miles south of Palmer, Alaska.

The regulations which implement the CZMA provide that the Secretary may dismiss an appeal for good cause. Good cause is defined to include, but is not limited to, Secretarial receipt of a detailed comment from the Federal agency to which application has been made for a Federal license or permit, or for Federal assistance, stating that the agency has disapproved that application. See, 15 CFR 930.128 (1988). In Mr. Benson's case, the Corps has denied the permit request for the proposed expansion project and, simultaneously, denied a request for an extension of time to complete work previously authorized and required mitigation measures to redress problems created by work done under the original authorization.

In view of the detailed and independent denial by the Corps of the underlying permit application, Mr. Benson's appeal has been dismissed for good cause pursuant to 15 CFR 930.128.

**FOR FURTHER INFORMATION CONTACT:** Hugh C. Schratwieser, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue, NW., Suite 603, Washington, DC 20235, (202) 673-5200.

Date: November 23, 1988.

**B. Kent Burton,**  
*Assistant Secretary for Oceans and Atmosphere.*

(Federal Domestic Assistant Catalog No. 11.419 Coastal Zone Management Program Assistance)

[FR Doc. 88-27719 Filed 11-30-88; 8:45 am]

**BILLING CODE 3510-08-M**

**Solicitation for Sea Grant Review Panelists**

**AGENCY:** Department of Commerce.

**SUBAGENCY:** National Oceanic and Atmospheric Administration, Commerce.

**ACTION:** Notice of solicitation for Sea Grant Review Panelists.

**SUMMARY:** This notice responds to section 209(c) of the National Sea Grant College Program Act, 33 U.S.C. 112, which requires the Secretary of Commerce to solicit nominations for membership on the Sea Grant Review Panel at least once a year. This advisory committee provides advice on the implementation of the National Sea Grant College Program.

**DATES:** Resumes should be sent to the address specified and must be received by January 3, 1989.

**ADDRESS:** Ned A. Ostenso, Director, National Sea Grant College Program, 6010 Executive Blvd., Rm. 812, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:** Robert J. Shephard of the National Sea Grant College Program at the address given above; telephone 301/443-8886, (FTS) 443-8886.

**SUPPLEMENTARY INFORMATION:** Section 209 of the Act establishes a national review panel to advise the Secretary of Commerce, the Under Secretary for Oceans and Atmosphere and the Director of the National Sea Grant College Program on the implementation of the Sea Grant Program. The panel provides advice on such matters as:

- (a) The Sea Grant Fellowship program;
- (b) Applications or proposals for, and performance under, grants and contracts awarded under sections 205 and 206, and section 3 of the Sea Grant Program Improvement Act of 1976;
- (c) The designation and operation of sea grant colleges and sea grant regional consortia; and the operation of the sea grant program;
- (d) The formulation and application of the planning guidelines and priorities under section 204 (a) and (c)(1); and

(e) Such other matters as the Secretary refers to the panel for review and advice.

The Panel is to consist of fifteen voting members composed as follows:

Not less than eight of the voting members of the panel should be individuals who, by reason of knowledge, experience, or training, are especially qualified in one or more of the disciplines and fields included in marine science. The other voting members shall be individuals who by reason of knowledge, experience, or training, or especially qualified in, or representative of, education, extension services, state government, industry, economics, planning, or any other activity which is appropriate to, and important for, any effort to enhance the understanding, assessment, development, utilization, or conservation of ocean and coastal resources. No individual is eligible to be a voting member of the panel if the individual is (A) the director of a sea grant college, sea grant regional consortium, or sea grant program, (B) an applicant for or beneficiary (as determined by the Secretary) of, any grant or contract under section 205 or 206; or (C) a full-time officer or employee of the United States.

The Director of the National Sea Grant Program and one Director of a Sea Grant Program also serve as non-voting members.

At the present time, eleven of the fifteen panel members have been appointed. Original appointments include: Five for a 3-year term, three for a 2-year term, and three for a 1-year term.

Date: November 23, 1988.

**Alan R. Thomas,**  
*Deputy Assistant Administrator, OAR.*  
[FR Doc. 88-27545 Filed 11-30-88; 8:45 am]  
**BILLING CODE 3510-12-M**

**National Marine Fisheries Service; Marine Mammals; Application for Permit; Micke Grove Zoo (P416)**

Notice is hereby given that the Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. *Applicant:* Mick Grove Zoo, 11793 N. Micke Grove Road, Lodi, California 95240

2. *Type of Permit:* Public display

**3. Name and Number of Marine Mammals:** harbor seal (*Phoca vitulina*)

**4. Type of Take:** To permanently maintain unreleasable male harbor seal. The animal was deemed unreleasable due to motor damage which impairs use of his foreflippers.

**5. Location and Duration of Activity:** Animal currently held temporarily at Micke Grove.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the *Federal Register*, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC., within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Hwy., Silver Spring, MD 20910; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7415.

Date: November 22, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs.

[FR Doc. 88-27644 Filed 11-30-88; 8:45 am]

BILLING CODE 3510-22-M

# **COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS**

## **Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Korea**

November 23, 1988.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting limits.

**EFFECTIVE DATE:** November 23, 1988.

**FOR FURTHER INFORMATION CONTACT:** Kimbang Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-8041. For information on embargoes and quota re-openings, call (202) 377-3715.

### **SUPPLEMENTARY INFORMATION:**

Authority. Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories in Groups I and II are being adjusted, variously, for swing, carryover, carryforward, special carryforward and special shift.

A description of the textile and apparel categories in terms of T.S.U.S.A. numbers is available in the **CORRELATION:** Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see *Federal Register* notice 52 FR 47745, published on December 6, 1987). Also see 53 FR 161, published in the *Federal Register* on January 5, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 23, 1988.

Commissioner of Customs,  
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 30, 1987, as amended, issued to

you by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in the Republic of Korea and exported during the twelve-month period which began on January 1, 1988 and extends through December 31, 1988.

Effective on November 23, 1988, the directive of December 30, 1987 is amended further to adjust the current limits for cotton, wool and man-made fiber textile products in the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the Republic of Korea:

Category	Adjusted 12-month limit <sup>1</sup>
Sublevels in Group I:	
611 .....	2,650,254 square yards.
619/620 .....	108,632,891 square yards.
Sublevels in Group II:	
342 .....	68,262 dozen.
345 .....	85,887 dozen.
435 .....	34,128 dozen.
443 .....	338,159 numbers.
448 .....	34,029 dozen.
641 .....	1,034,508 dozen.
642 .....	96,201 dozen.
645/646 .....	3,646,885 dozen.

<sup>1</sup> The limits have not been adjusted to account for any imports exported after December 31, 1987.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-27693 Filed 11-30-88; 8:45 am]

BILLING CODE 3510-DR-M

## **DEPARTMENT OF DEFENSE**

### **Department of the Army**

**Chemical Stockpile Disposal Program; Intent To Prepare an Environmental Impact Statement To Initiate the Public Scoping Process for the Construction and Operation of a Chemical Munitions Disposal Facility at Anniston Army Depot, AL**

**AGENCY:** Department of the Army, DOD.

**ACTION:** Notice of intent.

**SUMMARY:** This announces the Notice of Intent to prepare an EIS on the potential impact of the design, construction, operation and closure of the proposed chemical agent demilitarization facility at Anniston Army Depot, Alabama. The proposed facility will be used to

demilitarize all chemical agents and munitions currently stored at the Anniston Army Depot. Potential environmental impacts will be examined for several locations of the on-site incineration facility and "no action" alternatives. The "no action" alternative is considered to be deferral of demilitarization with continued storage of the agents and munitions at Anniston Army Depot.

**SUPPLEMENTARY INFORMATION:** In its Record of Decision (53 Federal Register, No. 38, pp. 5816-17) for the Final Programmatic Environmental Impact Statement on the Chemical Stockpile Disposal Program, the Department of the Army selected on-site disposal by incineration at all eight chemical munitions storage sites within the continental United States as the method by which it will destroy its lethal chemical stockpile. In compliance with the National Environmental Policy Act (NEPA), section 102(2)(c), the Army determined that an EIS will be prepared to assess the site-specific health and environmental impacts of on-site incineration of chemical agents and munitions at Anniston Army Depot. The first phase of this effort will entail the collection and analyses of detailed site-specific information to ensure that the programmatic preferred alternative (on-site incineration) remains valid for Anniston Army Depot. A separate report summarizing this effort will be published prior to preparation of the draft EIS for Anniston Army Depot. The draft EIS should be available in the spring of 1990. Upon completion of the draft EIS, public notice of its availability for review will be announced and interested persons may provide comment on that document.

#### Notice of Public Meeting

Notice is further given of the Army's intention to initiate the scoping process to aid in determining the significant issues related to the proposed action at Anniston Army Depot. Public, as well as Federal, State and local agency, participation and input are desired. An initial scoping meeting will be held on December 15, 1988, at 6:30 p.m., at the Abrams Building, Anniston Army Depot. Interested individuals, government agencies and private organizations are encouraged to attend and submit information and comments for consideration by the Army.

**FOR FURTHER INFORMATION CONTACT:** Program Manager for Chemical

Demilitarization, ATTN: AMCPEO-CDI (Ms. Marilyn Tischbin), Aberdeen Proving Ground, Maryland 21010-5401. Individuals desiring to be placed on a mailing list to receive additional information on the public scoping process and copies of the draft and final EIS should contact the Program Manager at the above address.

Lewis D. Walker,  
Deputy for Environment, Safety and Occupational Health OASA(16L).  
[FR Doc. 88-27628 Filed 11-30-88; 8:45 am]  
BILLING CODE 3710-08-M

## DEPARTMENT OF ENERGY

### Office of Conservation and Renewable Energy

[Case No. F-016]

#### Energy Conservation Program for Consumer Products; Decision and Order Granting Waiver From Furnace Test Procedures to Rheem Manufacturing Co.

**AGENCY:** Department of Energy.

**ACTION:** Decision and order.

**SUMMARY:** Notice is given of the Decision and Order (Case F-016) granting Rheem Manufacturing Company a waiver for its Models (—) GEB and (—) GKA condensing warm air furnaces from the existing DOE furnace test procedures.

#### FOR FURTHER INFORMATION CONTACT:

Esher R. Kweller, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-132, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9127  
Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-12, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9507

**SUPPLEMENTARY INFORMATION:** In accordance with 10 CFR 430.27(1), notice is hereby given of the issuance of the Decision and Order set out below. In the Decision and Order, Rheem Manufacturing Company has been granted a waiver for its models (—) GEB and (—) GKA condensing warm air furnaces, permitting the company to use an alternate test method.

Issued in Washington, DC, November 23, 1988.

John R. Berg,

Acting Assistant Secretary, Conservation and Renewable Energy.

#### Decision and Order

The Energy Conservation Program for Consumer Products was established pursuant to the Energy Policy and Conservation Act, Pub. L. 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act, Pub. L. 95-619, the National Appliance Energy Conservation Act of 1987, Pub. L. 100-12, 92 Stat. 3266, and the National Appliance Energy Conservation Amendments of 1988, Pub. L. 100-357, which requires the Department of Energy (DOE) to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchase decisions. These test procedures appear at 10 CFR Part 430, Subpart B.

The Department of Energy amended the test procedure regulations by adding § 430.27 on September 26, 1980, creating the waiver process. 45 FR 64108. DOE further amended the Department's appliance test procedure waiver process to allow the Assistant Secretary for Conservation and Renewable Energy to grant an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed product test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary of Conservation and Renewable Energy to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing of the basic model according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inadequate comparative data. 45 FR 64108 (September 26, 1980).

Pursuant to § 430.27(1), the Department shall publish in the Federal Register notice of each waiver granted, and any limiting conditions of each waiver.

Rheem Manufacturing Company (Rheem), filed a "Petition for Waiver" in accordance with § 430.27 of 10 CFR Part 430. DOE published in the *Federal Register* Rheem's petition and solicited comments, data, and information respecting the petition. 53 FR 25535 (July 7, 1988). One comment was received, from Teledyne Laars, which supported granting the waiver to Rheem.

DOE consulted with the Federal Trade Commission on October 7, 1988 concerning the Rheem Petition.

#### Assertions and Determinations

Rheem's petition seeks a waiver from the DOE test provisions that require a 1.5 minute time delay between the ignition of the burner and the starting of the circulating air blower. Instead, Rheem requests the allowance to test using a 30 second blower time delay when testing its (—) GEB and (—) GKA condensing gas furnaces. Rheem states that since the 30 second delay is indicative of how the (—) GEB and (—) GKA models actually operate and since such a delay results in an energy savings of approximately 1.8 percent, the waiver should be granted.

Since the blower controls incorporated on the Rheem condensing furnaces are designed to impose a 30 second blower delay in every instance of start up, and since the current test provisions do not specifically address this type of control, DOE agrees that a waiver should be granted to allow the 30 second blower time delay when testing the Rheem (—) GEB and (—) GKA condensing furnaces. Accordingly, with regard to testing the Rheem (—) GEB and (—) GKA condensing furnaces, today's Decision and Order exempts Rheem from the existing provisions regarding blower controls and allows testing with the 30 second delay.

It is therefore ordered that:

(1) The "Petition for Waiver" filed by Rheem Manufacturing Company (F-016), is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraph (3) and (4).

(2) Notwithstanding any contrary provisions of Appendix N of 10 CFR Part 430, Subpart B, Rheem Manufacturing Company shall be permitted to test its (—) GEB and (—) GKA condensing gas furnaces on the basis of the test procedure specified in 10 CFR Part 430, with the modification set forth below:

(i) 3.0 Test procedure. Testing and measurements shall be as specified in section 9 of ANSI/ASHARE 103-1982 with the inclusion of the following procedures in lieu of section 9.3.1 of ANSI/ASHARE 103-1982.

Gas- and Oil-Fueled Central Furnaces. After equilibrium conditions are

achieved following the cool down test and the required measurements performed, turn on the furnaces and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t—), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulating blower, in which case the burner and blower shall be started together; (2) the furnaces are designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time would result in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t—), using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within  $\pm 0.01$  in. of water gauge of the manufacturers recommended on-period draft."

(ii) With the exception of the modification set forth in subparagraphs (i) above, Rheem Manufacturing Company shall comply in all respects with the test procedures specified in Appendix N of 10 CFR Part 430, Subpart B.

(3) The waiver shall remain in effect from the date of issuance of this order until the Department of Energy prescribes final test procedures appropriate to the (—) GEB and (—) GKA models of condensing warm air furnaces manufactured by Rheem Manufacturing Company.

(4) This waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the applicant. This waiver may be revoked or modified at any time upon a determination that the factual basis underlying the application is incorrect.

Issued in Washington, DC, November 23, 1988.

John R. Berg,

Acting Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 88-27717 Filed 11-30-88; 8:45 am]

BILLING CODE 6450-01-M

#### Federal Energy Regulatory Commission

[Docket Nos. CP87-358-001 and CP87-428-001]

#### Tennessee Gas Pipeline Co. and CNG Transmission Corp.; Intent to Prepare an Environmental Assessment on the Proposed Norex Project and Request for Comments on Environmental Issues

November 23, 1988.

#### Description of Proposed Action and Request for Comments

Notice is hereby given that the staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) on the facilities proposed in the above-referenced dockets. Tennessee Gas Pipeline Company (Tennessee) would construct a total of 35.7 miles of 10-, 12-, and 30-inch-diameter pipeline loop, 17.4 miles of 10-, 12-, and 24-inch-diameter replacement pipeline, and two new meter stations in New York, Massachusetts, and New Hampshire. Also, 16 existing meter stations would be upgraded and 2,075 horsepower of compression would be added at 2 existing compressor stations. CNG Transmission Corporation (CNG) would construct 12.3 miles of 30-inch-diameter pipeline loop and a new measuring station in New York. The facilities would be used to transport up to 24,418,257 Dth of natural gas per year from Tennessee's Canadian and domestic supplies. Tennessee would deliver the gas to CNG near North Sheldon, New York, and CNG would redeliver it to Tennessee near Morrisville, New York. Tennessee would then transport the gas to Northeast markets.

In the Commission's *Order Finding Additional Projects To Be Discrete And Dismissing Applications*, issued on June 29, 1988, concerning pipeline projects in the Northeast, this project was determined to be "discrete" and was referred to as the Norex Project.<sup>1</sup> Since the facilities proposed by Tennessee and CNG are interdependent and, if authorized, would be constructed simultaneously, the staff of the FERC will analyze them in one EA.

The applications filed by CNG and Tennessee on October 6, 1987, and November 2, 1988, respectively, seek a Certificate of Public Convenience and Necessity under section 7(c) of the Natural Gas Act to increase firm

<sup>1</sup> A discrete project is one that can be processed independently and, if authorized, would not adversely affect the pending competitive projects to supply gas to the Northeast.

transportation service to 10 of Tennessee's existing customers. Tennessee, CNG, and the customers (referred to as the Norex Customers)<sup>2</sup> state that the proposed service is needed by November 1, 1989, to avoid curtailing service during the winter heating season or using more costly supplemental fuels. To meet the in-service date, construction of the facilities is proposed to begin May 1, 1989.

<sup>2</sup> The Berkshire Gas Company, Boston Gas Company, Colonial Gas Company, Concord Natural Gas Corporation, EnergyNorth, Inc., Essex County Gas Company, Fitchburg Gas and Electric Light

By this notice the FERC staff is requesting comments on the scope of the analysis that should be conducted for the EA. All comments will be reviewed prior to publication of the EA and significant issues will be addressed. Comments should focus on potential environmental effects, alternatives to the proposal (including alternative routes), and measures to mitigate impact. Written comments should be submitted by December 23, 1988, in

Company, City of Holyoke, The Southern Connecticut Gas Company, and the Valley Gas Company.

accordance with the procedures identified at the end of this notice.

#### Proposed Facilities

Figures 1 and 2 show the general location of the facilities. Appendix A contains detailed maps of the proposed pipeline, compressor stations to be upgraded, and new meter stations.<sup>3</sup> The locations of the facilities and the proposed construction and permanent rights-of-way are identified in table 1.

<sup>3</sup> Figures 1 and 2 and appendix A have not been printed in the Federal Register, but are available from the FERC's Division of Program Management, Public Reference Section, (202) 357-8118.

TABLE 1.—FACILITY LOCATION AND LAND REQUIREMENTS

Company and project	Location (County/State)	Facility	Width of construction ROW <sup>1</sup> (feet)	New ROW (feet) or site (acres)
CNG.....	Tompkins/NY.....	12.3 mi., 30-in. pipeline loop <sup>2</sup> .....	Not Given.....	Not Given.
Tennessee:				
Section 1.....	Madison/NY.....	2.1 mi., 30-in. pipeline loop.....	75.....	25.
Section 2.....	Rensselaer/NY.....	3.0 mi., 30-in. pipeline loop.....	75.....	25.
Section 3.....	Hampden/MA.....	2.9 mi., 30-in. pipeline loop.....	75.....	25.
Section 4.....	Hampden/MA.....	5.7 mi., 30-in. pipeline loop.....	75.....	25.
Section 5.....	Worcester/MA.....	3.0 mi., 30-in. pipeline loop.....	75.....	25.
Section 6.....	Berkshire/MA.....	6.0 mi., 10-in. pipeline loop.....	75.....	25.
Section 7.....	Hampshire/MA.....	7.6 mi., 12-in. replacement pipeline <sup>3</sup> .....	40.....	10 (shift). <sup>4</sup>
Section 8.....	Worcester/MA.....	7.6 mi., 10-in. replacement pipeline.....	40.....	10 (shift).
Section 9.....	Hillsboro/NH.....	2.1 mi., 12-in. pipeline loop.....	40.....	10.
Section 10.....	Merrimack/NH.....	8.4 mi., 12-in. pipeline loop.....	40.....	10.
Section 11.....	Middlesex/MA.....	2.3 mi., 24-in. replacement pipeline.....	40.....	10 (shift).
Section 11.....	Essex/MA.....	2.5 mi., 12-in. pipeline loop.....	40.....	10.
Tennessee.....	Columbia/NY.....	1,240 hp addition, Compressor Station 261.....		0.
Tennessee.....	Worcester/MA.....	835 hp addition, Compressor Station 264.....		0.
CNG.....	Madison/NY.....	Facilities addition, Morrisville Meter Station.....		1.
Tennessee.....	Rockingham/NH.....	New meter station.....		1.
Tennessee.....	Wyoming/NY.....	New meter station.....		1.

<sup>1</sup> ROW—right-of-way.

<sup>2</sup> Pipeline Loop—New pipeline would be installed parallel and adjacent to existing pipeline.

<sup>3</sup> Replacement pipeline—Old pipeline would be removed and larger pipeline would be installed in or near the same trench.

<sup>4</sup> Shift—The width of the existing ROW would remain the same but would be relocated 10 feet to either side.

#### Related Nonjurisdictional Facilities

According to Tennessee, two intrastate pipelines, which are not under FERC jurisdiction, would be constructed if the Norex project is approved. EnergyNorth, Inc., plans to construct 3.5 miles of 8-inch-diameter pipeline in the town of Londonderry, New Hampshire, to serve commercial and industrial customers. The pipeline would originate from Tennessee's Concord Lateral and parallel state and local roads for its entire length, crossing mostly residential land. The route is shown on map 27. It is unknown at this time whether EnergyNorth, Inc., would construct the pipeline within the existing road right-of-way (ROW) or seek new ROW from adjacent property owners. Also, Berkshire Gas Company plans to build 2.5 miles of 8-inch-diameter pipeline near Northampton, Massachusetts, to

enable it to receive Norex gas. The pipeline would cross state land for a few tenths of a mile and would then be parallel and within railroad and highway ROW's for the remainder of the route. The area is predominantly residential and commercial. The route is shown on map 30.

#### Construction Techniques

Constructing the proposed interstate pipeline would involve clearing and grading the construction ROW, excavating a trench of sufficient depth to allow 18 to 36 inches of cover over the line, welding and laying the pipeline, backfilling the trench, and regarding and seeding the ROW. In a number of locations blasting would be required to excavate the trench. Blast rock would be disposed of on-site, if approved by the landowner, or in local landfills. For the projects indicated in table 1 as pipeline

replacements, the existing pipeline would be removed and the new line would be installed in or near the same ditch. For the pipeline loops, the new line would be installed parallel to the existing line and the permanent ROW would be widened by 10 to 25 feet. After construction, the construction ROW would revert in full to the landowner. Any new permanent ROW would be restricted from development for the life of the facility. All disturbed areas would be cleaned up, graded to conform to the original contours, and revegetated in accordance with the landowner's specifications or a revegetation plan.

#### Areas of Special Concern

Tennessee's pipeline would cross about 2 miles of wetland. Also, a number of creeks and rivers would be crossed, including the watersheds for Manchester, New Hampshire

(Tennessee's section 9) and Ithaca, New York (Consolidated's loop). High quality streams would be crossed during low-flow and non-spawning periods. Clean rock tramways or portable bridges would be used to reduce turbidity where equipment crosses streams. Some rivers, including the Housatonic and Nashua Rivers in Massachusetts, may contain sediments contaminated by polychlorinated biphenyls (PCB's), a toxic substance, within the area to be trenched. Directional drilling is proposed for the Housatonic River crossing to avoid disturbing contaminated sediments. A sediment analyses is proposed for the Nashua River to determine the content of PCB's. All stream, river, and wetland crossings would be subject to the Commission's environmental review process, state permit requirements, and the U.S. Army Corps of Engineers sections 404 and 10 permits.

Tennessee's proposed Section 3 pipeline near Agawam, Massachusetts, would cross Leonard Pond, a wetland that the U.S. Environmental Protection Agency has identified as being sensitive to disturbance. Section 6, near Pittsfield, Massachusetts, would cross Brattle Brook Park, a wetland that is habitat for a state-listed rare plant, and the Twin Meadows Wildlife Sanctuary, which is operated by the Massachusetts Audubon Society. Section 10 would cross the Middlesex Canal, which is on the National Register of Historic Places, and a historic homestead known as Butter's Farm, which was built in the late 1600's.

Tennessee's pipeline traverses a number of residential areas in Massachusetts. Tennessee has proposed route alternatives to avoid a subdivision on the east side of Holmes Road in Pittsfield, a subdivision on the east side of County Road North in Easthampton, and a residential area east of Russell Street in Peabody. According to Tennessee, there are no reasonable alternatives to avoid White Fox Estates in Agawam, a residential area between Elm and Williams Streets in Pittsfield, a subdivision between West and Oliver Streets in Easthampton, and a residential area between Lowell and Russell Streets in Peabody. For these areas, Tennessee proposes special construction techniques to minimize the work area and reduce the time of disturbance to any one location. All driveways, lawns, shrubs, fences, and other landscaping would be restored.

Tennessee's facilities are potentially contaminated by PCB's used in the past for lubricating fluids. Tennessee must file a plan for abandonment and

disposal of the facilities with the FERC and the U.S. Environmental Protection Agency, and the plan must be approved prior to construction.

#### Environmental Issues

The EA will address a number of environmental concerns that have been raised in previous projects in the region, and specific concerns identified by the staff and various state and Federal agencies. The following issues have been identified to date:

#### Land Use

- Eminent domain.
- Impact on homes, future development, and public recreation areas.
- Impact on nature preserves.

#### Aesthetics

- Affect of appearance of ROW and above-ground facilities on neighborhoods and scenic areas.
- Affect of construction across scenic streams.

#### Pipeline Safety

- Probability of pipeline rupture.
- Blasting in populated areas.

#### Cultural Resources

- Effect of the project on properties listed on or eligible for the National Register of Historic Places.

#### Water Resources

- Effects of construction on potable water supplies.
- Excavation of stream sediments contaminated by toxic substances.

#### Wildlife

- Impact on fisheries.
- Impact on state and federally listed threatened and endangered species.

#### Vegetation

- Impact on wetlands.
- Short- and long-term effects on vegetation from clearing, seeding, and right-of-way management.

#### Soils and Geology

- Erosion control and revegetation.
- Effect on crop production and farmland.
- Proximity to bedrock and the effects of blasting.

#### Air and Noise

- Impact of additional compression on air quality and noise levels.

#### PCB's

- Removal and disposal of facilities contaminated by PCB's.

#### Alternatives

- Pipeline route variations and alternative system designs.

#### Comment Procedures

The EA will be based on the staff's independent analysis of the proposal and, together with the comments received, will comprise part of the record to be considered by the Commission in this proceeding. The EA will be sent to all parties in this proceeding, to those providing comments in response to this notice, to Federal, state, and local agencies, to interested members of the public, and to those individuals that have sent letters to the Commission.

The EA may be offered as evidentiary material if an evidentiary hearing is held in this proceeding. In the event that an evidentiary hearing is held, anyone not previously a party to this proceeding and wishing to present evidence on environmental or other matters must first file with the Commission a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214).

Comments from Federal, state, and local agencies and the public are requested to help identify significant issues or concerns related to the proposed action, to determine the scope of the issues that need to be analyzed, and to identify and eliminate from detailed study the issues which are not significant. All comments on specific environmental issues should contain supporting documentation or rationale. Written comments should be submitted on or before December 23, 1988, reference *Docket Nos. CP87-358-001 and CP87-428-001*, and be addressed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. A copy of the comments should also be sent to Mr. James Daniel, Project Manager, Federal Energy Regulatory Commission, Office of Pipeline and Producer Regulation, Environmental Analysis Branch, Room 7312, 825 North Capitol Street, NE., Washington, DC 20426.

Maps showing the location of the proposed pipeline facilities have been provided to parties in this proceeding, to Federal, state, and local governmental agencies, and the public. Additional information on environmental matters concerning the proposal is available

from Mr. James Daniel, telephone (202) 357-5364.

Lois D. Cashell,  
Secretary.

[FR Doc. 88-27691 Filed 11-30-88; 8:45 am]

BILLING CODE 6717-01-M

**[Docket Nos. CP89-137-000 et al.]**

**Mid-Louisiana Gas Co. et al.; Natural Gas Certificate Filings**

November 23, 1988.

Take notice that the following filings have been made with the Commission:

**1. Mid-Louisiana Gas Company**

[Docket No. CP89-137-000]

Take notice that on November 7, 1988, as supplemented on November 15, 1988, Mid-Louisiana Gas Company (Mid-La) 5251 DTC Parkway, Suite 550, Englewood, Colorado 80111, filed in Docket No. CP89-137-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Wintershall Pipeline Corporation (WIPC), under its blanket authorization issued in Docket No. CP86-214-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Mid-La would perform the proposed interruptible transportation service for WIPC, an intrastate pipeline, pursuant to a service agreement for transportation of natural gas dated June 1, 1988. The term of the transportation agreement is from the date of execution and shall remain in full force and effect for one year and month-to-month thereafter. Mid-La proposes to transport on a peak day up to 20,000 MMBtu per day; on an average day up to 20,000 MMBtu; and on an annual basis 7,300,000 MMBtu of natural gas for WIPC. It is stated that WIPC would pay Mid-La for all natural gas delivered pursuant to the transportation agreement in accordance with Mid-La's Rate Schedule IT-1. Mid-La states that it would transport natural gas for WIPC from points of receipt located in the Monroe Field, Louisiana to points of interconnections in that same field between its facilities and facilities owned by WIPC. Mid-La avers that the transportation would be behind field gathering systems and would involve potentially up to 20 different metering facilities. It is further averred that the meter runs involve approximately \$2,000 each, so that the maximum expenditure would not exceed \$40,000. The location

of such facilities is Mid-La's field gathering facilities in the Monroe field, Ouachita, Morehouse and Union Parishes, Louisiana. Mid-La states that any expenses incurred from the construction of these interconnects would be paid for from cash on hand.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Mid-La commenced such self-implementing service on September 28, 1988, as reported in Docket No. ST89-406-000.

*Comment date:* January 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

**2. Northwest Pipeline Corporation**

[Docket No. CP89-137-000]

Take notice that on November 21, 1988, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-263-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86-578-000 pursuant to section 7 of the Natural Gas Act for Universal Frozen Foods Corporation (Universal Foods), all as more fully set forth in the request on file Corporation with the Commission and open to public inspection.

Northwest proposes to transport natural gas for Universal Foods, on an interruptible basis, pursuant to a transportation agreement dated September 15, 1988. Northwest explains that service commenced September 24, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-301-000. Northwest further explains that the peak day quantity would be 8,000 MMBtu, the average daily quantity would be 100 MBtu, and that the annual quantity would be 36,500 MMBtu. Northwest explains that it would receive natural gas from various sources in Wyoming, Colorado, Utah, New Mexico, and Washington, and would redeliver the gas to Intermountain Gas Company, a local distribution company, Twin Falls County, Idaho.

*Comment date:* January 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

**3. Panhandle Eastern Pipe Line Company**

[Docket No. CP89-253-000]

Take notice that on November 21, 1988, Panhandle Eastern Pipe Line

Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-253-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide firm transportation service for General Motors Corporation (General Motors), an end-user, under the blanket certificate issued in Docket No. CP86-585-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Panhandle states that pursuant to a transportation agreement dated October 1, 1988, and under its Rate Schedule PT-Firm, it proposes to transport up to 1,600 dekatherms (dt) per day equivalent of natural gas on a firm basis for General Motors from points of receipt listed in Exhibit "A" of the agreement to delivery points also listed in Exhibit "A", which transportation service may involve interconnections between Panhandle and various transporters. Panhandle states that it would receive the gas at various existing points on its system in Texas, Oklahoma, Kansas, Colorado, Wyoming, and Illinois, and that it would transport and redeliver the gas, less fuel used and unaccounted for line loss, to General Motors in Vermillion Parish, Louisiana.

Panhandle advises that service under § 284.223(a) commenced on October 1, 1988, as reported in Docket No. ST89-517. Panhandle further advises that it would transport 1,640 dt on an average day and 598,600 dt annually.

*Comment date:* January 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

**4. Northwest Pipeline Corporation**

[Docket No. CP89-262-000]

Take notice that on November 21, 1988, Northwest Pipeline Corporation, (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-262-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Chevron U.S.A. Inc. (Chevron), a producer, under the blanket certificate issued in Docket No. CP86-578-000 on January 19, 1988, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest states that pursuant to a transportation agreement dated June 10, 1988, as amended October 20, 1988,

under Rate Schedule TI-1, it proposes to transport up to 100,000 MMBtu per day equivalent of natural gas for Chevron from points of receipt listed in Exhibit "A" of the agreement to delivery points listed in Exhibit "B", which transportation service may involve interconnections between Northwest and various transporters. Northwest states that it would receive the gas at existing points on its system in Colorado, Wyoming, New Mexico, Utah and Washington, and that it would transport and redeliver the gas to various delivery points located on Northwest's system in Washington, Oregon, Colorado and Wyoming.

Northwest advises that service under § 284.223(a) commenced October 10, 1988, as reported in Docket No. ST89-565 (filed November 7, 1988). Northwest further advises that it would transport 5,500 MMBtu on an average day and 2,000,000 MMBtu annually.

*Comment date:* January 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

#### 5. Northwest Pipeline Corporation

[Docket No. CP89-264-000]

Take notice that on November 21, 1988, Northwest Pipeline Corporation, (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-264-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Occidental Chemical Company (Occidental), an end-user, under the blanket certificate issued in Docket No. CP86-578-000 on January 19, 1988, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest states that pursuant to a transportation agreement dated July 14, 1988, under Rate Schedule TI-1, it proposes to transport up to 5,000 MMBtu per day equivalent of natural gas for Occidental, which transportation service may involve interconnections between Northwest and various transporters. Northwest states that it would receive the gas from the existing Green River receipt point in Sweetwater County, Wyoming, the Ignacio receipt point in La Plata County, Colorado, the Opal Plant receipt point in Lincoln County, Wyoming, and the Sumas receipt point in Whatcom County, Washington, and that it would transport and redeliver the gas to the North Tacoma Meter Station

delivery point to Washington Natural Gas in Pierce County, Washington.

Northwest advises that service under § 284.223(a) commenced October 17, 1988, as reported in Docket No. ST89-610 (filed November 8, 1988). Northwest further advises that it would transport 40 MMBtu on an average day and 15,000 MMBtu annually.

*Comment date:* January 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

#### 6. Northwest Pipeline Corporation

[Docket No. CP89-266-000]

Take notice that on November 21, 1988, Northwest Pipeline Corporation, (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-266-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Williams Gas Marketing (Williams), a marketer, under the blanket certificate issued in Docket No. CP86-578-000 on January 19, 1988, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest states that pursuant to a transportation agreement dated September 26, 1988, as amended September 26, 1988, under Rate Schedule TI-1, it proposes to transport up to 12,000 MMBtu per day equivalent of natural gas for Williams, which transportation service may involve interconnections between Northwest and various transporters. Northwest states that it would receive the gas from existing wells located in Lincoln, Sublette and Sweetwater Counties, Wyoming, to the Moxa Arch delivery points located in Lincoln County, Wyoming, and the Opal Plant delivery point located in Lincoln County, Wyoming.

Northwest advises that service under § 284.223(a) commenced October 1, 1988, as reported in Docket No. ST89-509 (filed November 2, 1988). Northwest further advises that it would transport 8,000 MMBtu on an average day and 3,000,000 MMBtu annually.

*Comment date:* January 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

#### 7. Arkla Energy Resources a division of Arkla, Inc.

[Docket No. CP89-195-000]

Take notice that on November 14, 1988, Arkla Energy Resources (AER), a

division of Arkla, Inc., P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP89-195-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a tap and related jurisdictional facilities necessary to deliver gas from its jurisdictional system for resale by Arkansas Louisiana Gas Company (ALG), a division of Arkla, Inc., under its blanket certificate issued in Docket Nos. CP82-384-000 and CP82-384-001 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

AER specifically proposes (1) to construct and operate a sales tap on its Line 4-1-4 in Grant County, Oklahoma, to deliver gas to ALG for service to Glen Webster, a domestic customer who would use approximately 240 Mcf per year; (2) to construct and operate a sales tap on its Line 633 in Pontotoc County, Oklahoma, to deliver gas to ALG for service to Tommy Palmer, a domestic customer who would use approximately 160 Mcf per year.

AER states that gas would be delivered from its general system supply, which it is stated is adequate to provide the service.

*Comment date:* January 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 88-27657 Filed 11-30-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-214-000, et al.]

**Texas Gas Transmission Corp. et al.;  
Natural Gas Certificate Filings**

November 25, 1988.

Take notice that the following filings have been made with the Commission:

**1. Texas Gas Transmission Corporation**

[Docket No. CP89-214-000]

Take notice that on November 16, 1988, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-214-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of ARMCO, Inc. (ARMCO), under Texas Gas' blanket certificate issued in Docket No. CP88-686-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas proposes to transport on an interruptible basis up to 42,743 MMBtu equivalent of natural gas on a peak day for ARMCO, 20,000 MMBtu equivalent on an average day and 15,601,195 MMBtu equivalent on an annual basis. It is stated that the transportation service would be effected using existing facilities and would not require any construction of additional facilities. It is explained that the service commenced October 1, 1988, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-163.

*Comment date:* January 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

**2. Panhandle Eastern Pipe Line Company**

[Docket No. CP89-211-000]

Take notice that on November 16, 1988, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642 filed in Docket No. CP89-211-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Mobil Natural Gas, Inc. (Mobil), a shipper of natural gas, under Panhandle's blanket certificate issued in Docket No. CP86-585-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle proposes to transport on an interruptible basis up to 30,000 dt equivalent on an average day and 3,650,000 dt equivalent on an annual basis. It is stated that the transportation service would be effected using existing facilities and would not require any construction of additional facilities. It is stated that Panhandle would receive the gas for Mobil's account at existing receipt points in Texas, Oklahoma, Kansas, Colorado, Wyoming and Illinois. It is further stated that Panhandle would deliver equivalent volumes of gas less fuel used and unaccounted for line loss to Northern Natural Gas Company in Kiowa County, Kansas. It is explained that the service commenced September 22, 1988, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-238.

*Comment date:* January 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

**3. Tennessee Gas Pipeline Company**

[Docket No. CP89-142-000]

Take notice that on November 7, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-142-000, an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon an interruptible transportation service provided by Tennessee for Northern Natural Gas Company (Northern) all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee states that it was authorized to provide the transportation service for Northern pursuant to certificate authorization granted in Docket Nos. CP84-415-000 and CP84-417-000 and that the underlying transportation agreements expired on November 1, 1988. Tennessee further states that Northern has agreed to the abandonment and that Tennessee will continue transporting the gas for Northern under its blanket certificate authorization issued pursuant to Part 284 of the Commission's Regulations.

*Comment date:* December 16, 1988, in accordance with Standard Paragraph F at the end of the notice.

**4. Panhandle Eastern Pipe Line Company**

[Docket No. CP89-210-000]

Take notice that on November 14, 1988, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642 filed in Docket No. CP89-183-000 a request

pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Mountain Iron & Supply Company (Mountain Iron), a shipper of natural gas and agent for IBS, Inc., an end-user of natural gas, under Panhandle's blanket certificate issued in Docket No. CP86-585-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle proposes to transport on an interruptible basis up to 200 dt equivalent of natural gas on a peak day for Mountain Iron, 100 dt equivalent on an average day and 36,500 dt equivalent on an annual basis. It is stated that the transportation service would be effected using existing facilities and would not require any construction of additional facilities. It is stated that Panhandle would receive the gas for Mountain Iron's account at existing receipt points in Texas, Oklahoma, Kansas, Colorado, Wyoming and Illinois. It is further stated that Panhandle would deliver equivalent volumes of gas less fuel used and unaccounted for line loss to Central Illinois Light Company in Illinois. It is explained that the service commenced September 26, 1988, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-322.

*Comment date:* January 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

**5. Texas Gas Transmission Corporation**

[Docket No. CP89-183-000]

Take notice that on November 14, 1988, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-183-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Franklin Boxboard Corporation (Franklin), under Texas Gas' blanket certificate issued in Docket No. CP88-686-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas proposes to transport on an interruptible basis up to 1,323 MMBtu equivalent of natural gas on a peak day for Franklin, 979 MMBtu equivalent on an average day and 482,895 MMBtu equivalent on an annual basis. It is stated that Texas Gas would receive the gas for Franklin's account at various existing receipt points on Texas Gas' system and that Texas Gas would

deliver equivalent volumes in Butler County, Ohio. It is asserted that the transportation service would be effected using existing facilities and would not require any construction of additional facilities. It is explained that the service commenced September 17, 1988, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-167.

*Comment date:* January 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

#### 6. Texas Gas Transmission Corporation

[Docket No. CP89-193-000]

Take notice that on November 14, 1988, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-193-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of CSX NGL Corporation (CSX NGL), under Texas Gas' blanket certificate issued in Docket No. CP88-686-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas proposes to transport on an interruptible basis up to 85,000 MMBtu equivalent of natural gas on a peak day for CSX NGL, 50,000 MMBtu equivalent on an average day and 31,025,000 MMBtu equivalent on an annual basis. It is stated that Texas Gas would receive the gas at various existing receipt points on Texas Gas' system and would deliver equivalent volumes in Louisiana and offshore Louisiana. It is asserted that the transportation service would be effected using existing facilities and would not require any construction of additional facilities. It is explained that the service commenced September 17, 1988, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-169.

*Comment date:* January 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

#### 7. Texas Gas Transmission Corporation

[Docket No. CP89-191-000]

Take notice that on November 14, 1988, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-191-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Georgia-Pacific Corporation

(Georgia-Pacific), under Texas Gas' blanket certificate issued in Docket No. CP88-686-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas proposes to transport on an interruptible basis up to 1,628 MMBtu equivalent of natural gas on a peak day for Georgia-Pacific, 1,628 MMBtu equivalent on an average day and 594,220 MMBtu equivalent on an annual basis. It is stated that Texas Gas would receive the gas for Georgia-Pacific's account at existing receipt points on Texas Gas' system in Texas and Louisiana and would redeliver equivalent volumes of gas in Butler County, Ohio. It is asserted that the transportation service would be effected using existing facilities and would not require any construction of additional facilities. It is explained that the service commenced September 17, 1988, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-164.

*Comment date:* January 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

#### 8. Texas Gas Transmission Corporation

[Docket No. CP89-190-000]

Take notice that on November 14, 1988, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-190-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Middletown Paperboard Company (Middletown), under Texas Gas' blanket certificate issued in Docket No. CP88-686-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas proposes to transport on an interruptible basis up to 1,500 MMBtu equivalent of natural gas on a peak day for Middletown, 1,000 MMBtu equivalent on an average day and 547,500 MMBtu equivalent on an annual basis. It is stated that Texas Gas would receive the gas for Middletown's account at various existing receipt points on Texas Gas' system and would redeliver equivalent volumes in Butler County, Ohio. It is stated that the transportation service would be effected using existing facilities and would not require any construction of additional facilities. It is explained that the service commenced September 17, 1988, under the automatic

authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-165.

*Comment date:* January 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

#### 9. Texas Gas Transmission Corporation

[Docket No. CP89-189-000]

Take notice that on November 14, 1988, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-189-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Olin Corporation (Olin), under Texas Gas' blanket certificate issued in Docket No. CP88-686-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas proposes to transport on an interruptible basis up to 7,500 MMBtu equivalent of natural gas on a peak day for Olin, 5,500 MMBtu equivalent on an average day and 2,737,500 MMBtu equivalent on an annual basis. It is stated that Texas Gas would receive the gas for Olin's account at various existing points on Texas Gas' system in Texas, Louisiana, offshore Louisiana and Arkansas, and that Texas Gas would deliver equivalent volumes in Meade County, Kentucky. It is stated that the transportation service would be effected using facilities and would not require any construction of additional facilities. It is explained that the service commenced September 17, 1988, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-168.

*Comment date:* January 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

#### 10. Texas Gas Transmission Corporation

[Docket No. CP89-231-000]

Take notice that on November 17, 1988, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-231-000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas for Gulf Coast Industrial Gas, Inc. (Gulf Coast), under its blanket certificate issued in Docket No. CP88-686-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Gas proposes to transport up to 1,000 MMBtu of natural gas per day for Gulf Coast on an interruptible basis pursuant to a transportation agreement dated September 26, 1988, between Texas Gas and Gulf Coast. Texas Gas states that it would receive the gas for Gulf Coast's account in St. Mary Parish, Louisiana and would redeliver the natural gas for the account of Gulf Coast in Acadia Parish, Louisiana. It is indicated that the ultimate consumer of the gas would be Tomke Aluminum.

Texas Gas states that the estimated average daily quantity would be 1,000 MMBtu and that the annual quantities would be 365,000 MMBtu. It is further stated that service under § 284.223(a) commenced October 1, 1988, as reported in Docket No. ST89-420. Texas Gas indicates that the service would have an initial term continuing through the end of the month in which the agreement is dated and continue on a monthly basis thereafter. Texas Gas proposes to charge Gulf Coast a rate pursuant to Texas Gas' currently effective Rate Schedule T. No new facilities are proposed herein.

*Comment date:* January 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

#### 11. Texas Gas Transmission Corporation

[Docket No. CP89-182-000]

Take notice that on November 14, 1988, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-182-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Westvaco Corporation (Westvaco), under Texas Gas' blanket certificate issued in Docket No. CP88-688-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas proposes to transport on an interruptible basis up to 10,177 MMBtu equivalent of natural gas on a peak day for Westvaco, 4,500 MMBtu equivalent on an average day and 3,714,605 MMBtu equivalent on an annual basis. It is stated that Texas Gas would receive the gas for Westvaco's account at various existing receipt points on Texas Gas' system in Texas, Louisiana, offshore Louisiana and Arkansas, and that Texas Gas would deliver equivalent volumes to Westvaco in Wickliffe County, Kentucky. It is

stated that the transportation service would be effected using existing facilities and would not require any construction of additional facilities. It is explained that the service commenced September 17, 1988, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-162.

*Comment date:* January 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

#### 12. Tennessee Gas Pipeline Company

[Docket No. CP89-180-000]

Take notice that on November 14, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-180-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport gas for Cornerstone Production Corporation (Cornerstone), a marketer of natural gas, under Tennessee's blanket certificate issued in Docket No. CP87-115-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee proposes to transport on an interruptible basis up to 50,000 dekatherm (dkt) of natural gas per day on behalf of Cornerstone pursuant to a transportation agreement dated October 5, 1988 as amended on October 27, 1988, between Tennessee and Cornerstone. Tennessee would receive gas at various existing points of receipt on its system in Louisiana, offshore Louisiana, Texas, Mississippi, Massachusetts, Pennsylvania, New York, New Jersey, Ohio and West Virginia and redeliver equivalent volumes, less fuel and lost and unaccounted for volumes, at existing delivery points in multiple states.

Tennessee further states that the estimated average daily and annual quantities would be 50,000 dkt and 18,250,000 dkt, respectively. Service under § 284.223(a) commenced on October 5, 1988, as reported in Docket No. ST89-557, it is stated.

*Comment date:* January 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

#### 13. Inexco Oil Company

[Docket No. CI73-715-001]

Take notice that on November 8, 1988, Inexco Oil Company (Inexco) of 909

Poydras Street, New Orleans, Louisiana 70160, filed an application pursuant to section 7(c) of the Natural Gas Act and §§ 2.75 and 157.23, *et seq.* of the Commission's regulations requesting that the Commission amend Inexco's certificate in Docket No. CI73-715 issued under the optional procedure in § 2.75 of the Commission's regulations to authorize the continued sale by Inexco of its interest in natural gas from the Furlow B-2 well located in DeSoto Parish, Louisiana, to Southern Natural Gas Company (Southern), all as more fully set forth in the application which is on file with the Commission and open to public inspection. Inexco also requests waiver of § 2.75 of the Commission's regulations to the extent necessary to permit amendment of its certificate as requested.

In support of its application, Inexco states that by amendment dated August 1, 1988, the Furlow B-2 well was added to its January 1, 1949, contract with Southern. Inexco indicates that sales from the Furlow B-2 well were previously covered by the operator OXY USA Inc. under its certificate in Docket No. G-2712 and related FERC Gas Rate Schedule No. 351.

*Comment date:* December 9, 1988, in accordance with Standard Paragraph J at the end of this notice.

#### Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held

without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

#### Standard Paragraph

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 88-27658 Filed 11-30-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-29-000]

#### Tennessee Gas Pipeline Co.; Filing

November 25, 1988.

Take notice that on November 21, 1988, Tennessee Gas Pipeline Company (Tennessee) filed alternative tariff sheets to its FERC Gas Tariff in response to the Commission's Order on Rehearing issued October 31, 1988 in Docket No. RP88-228-002. By that Order, the Commission requires Tennessee to develop Demand Rates for its firm transportation and sales customers based on customer nominations of annual requirements for service rather than the customers' certificated annual entitlements to service. The Commission did not, however, relieve Tennessee of its obligation to provide service to its customers up to their full certificated annual entitlements.

Tennessee states that in order to establish a balance of obligations between Tennessee and its customers and to provide an incentive for customers to communicate accurate market signals by their D<sub>2</sub> nominations, Tennessee is proposing that the Commission accept one of the three alternatives.

Tennessee states that the tariff sheets listed as Alternative I implement a D<sub>2</sub> nomination procedure for its firm sales and transportation customers and establish an Authorized Overrun Demand Charge. This Demand Charge is applicable to the difference between the customer's certificated service entitlement and his D<sub>2</sub> nomination and compensates Tennessee for standing ready to provide service up to the customers' full certificated entitlement.

Tennessee states the tariff sheets listed as Alternative II implement a D<sub>2</sub> nomination procedure for its firm sales and transportation customers and provide for the suspension of Tennessee's service obligation in excess of a customer's D<sub>2</sub> nomination. Tennessee retains the right to provide service but may file to permanently abandon its certificated sales service to the extent that service permits Tennessee to deliver quantities in excess of a customer's D<sub>2</sub> nomination. Tennessee is also establishing an authorized overrun provision which includes penalties in the event a customer takes quantities in excess of his D<sub>2</sub> nomination without Tennessee's prior approval. To the extent a firm sales customer does take unauthorized overrun quantities, revisions to Tennessee's Purchased Gas Adjustment provide for the direct billing of any increase in gas costs incurred by

Tennessee as a result of those authorized takes. Tennessee has also revised Article XXIV (Curtailment) and XXVI (Annual Quantity Limitations) of the General Terms and Conditions consistent with the customers' right to nominate their own service levels. To the extent a customer nominates less than his certificated annual entitlement to service, the customer's end-use quantities will be reduced pro rata across all end-use priorities. Lastly, Tennessee has revised its R Rate Schedule to eliminate the 10 cent rate discount now available to Tennessee's AQL restricted customers to the extent one of those customers nominates a D<sub>2</sub> quantity less than his current annual quantity entitlement.

Tennessee states that the tariff sheets listed as Alternative III are the same as Alternative II excluding the service suspension provisions of Alternative II.

Tennessee has also filed Tenth Revised Sheet No. 20 to correct an inadvertent error in its Daily Demand Rate.

The tariff sheets are proposed to be effective February 1, 1989.

Tennessee states that copies of the filing have been mailed to all parties in this proceeding, affected customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 2, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,  
Secretary.

[FR Doc. 88-27659 Filed 11-30-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-31-000]

#### West Texas Gathering Co.; Tariff Filing

November 25, 1988.

Take notice that on November 21, 1988, West Texas Gathering Company ("West Texas"), 550 WestLake Park

Blvd., Suite 170, Houston, Texas 77079, submitted for filing Original Sheet Nos. 1-41 of its FERC Gas Tariff, Original Volume No. 2. The Tariff filing sets forth rates, terms and conditions for gas transportation service.

West Texas states that its tariff filing is designed to open access to West Texas' services, within the contemplation of Part 284 of the Commission's Regulations, 18 CFR Part 284. West Texas' tariff filing sets out transportation rates which include minimum and maximum rates separately identifying cost components attributable to transportation and gathering costs, includes a cost basis for rates, and expresses rates on an MMBtu basis, all as required by the Commission's Regulations.

West Texas states these tariff sheets provide that they are filed to be made effective on November 21, 1988. West Texas has requested such waiver of the Commission's regulations as may be required in order to permit the proposed effective date.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's regulations. All such motions or protests must be filed on or before December 2, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 88-27660 Filed 11-30-88; 8:45 am]

BILLING CODE 6717-01-M

## Western Area Power Administration

### Boulder Canyon Project Proposed Power Rate

**AGENCY:** Western Area Power Administration, DOE.

**ACTION:** Notice of extension of consultation and comment period for a proposed power rate adjustment.

**SUMMARY:** The Western Area Power Administration (Western) announced in the *Federal Register* published June 22, 1988 (53 FR 23446), a proposed

adjustment of the rates for power and energy from the Boulder Canyon Project (BCP). In that notice, Western scheduled a public information forum for June 30, 1988, with the consultation and comment period to end August 8, 1988. Western also stated that consideration would be given to an extension of the consultation and comment period if requested by customers or interested parties.

Western received several requests for an extension of 45 days to the originally published consultation and comment period. The basis for the extension was to allow all interested parties an opportunity to review and analyze a new energy forecast, a new method of forecasting future replacement requirements, and new rate calculations.

After reviewing those requests for extension, Western concurred with the requests and rescheduled for September 7, 1988, the public comment forum previously scheduled for July 22, 1988. In addition, the ending date of the consultation and comment period was changed to September 22, 1988. This was noticed in the *Federal Register* at 53 FR 29085, August 2, 1988.

An additional public comment forum was scheduled (53 FR 38779, October 3, 1988) for October 28, 1988, and the end of the consultation and comment period extended to November 14, 1988.

Due to the need for further data input and analysis the October 28, 1988, public comment forum was canceled by written notification to the BCP customers and interested parties and is rescheduled by this *Federal Register* notice. Also, the consultation and comment period is being extended.

**DATES:** The consultation and comment period which began with the notification of the BCP rate adjustment (53 FR 23446, June 22, 1988) will end December 30, 1988. A public comment forum will be held at 10 a.m. on December 15, 1988.

**ADDRESSES:** The public comment forum will be held at the Boulder City Area Office, 3 miles south on Buchanan Road, Boulder City, Nevada, on the dates and times cited above. Written comments may be sent to: Mr. Thomas A. Hine, Area Manager, Boulder City Area Office, Western Area Power Administration, P.O. Box 200, Boulder City, NV 89005, (702) 477-3255.

**FOR FURTHER INFORMATION CONTACT:** Mr. Earl W. Hodge, Assistant Area Manager for Power Marketing, Boulder City Area Office, Western Area Power Administration, P.O. Box 200, Boulder City, NV 89005, (702) 477-3255.

Issued at Golden, Colorado, November 23, 1988.

William H. Clagett,  
Administrator.

[FR Doc. 88-27718 Filed 11-30-88; 8:45 am]

BILLING CODE 6450-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[OPTS-140109; FRL-3484-6]

### Access to Confidential Business Information by ICF Incorporated

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has authorized its contractor, ICF Incorporated (ICF) of Fairfax, VA for access to information which has been submitted to EPA under sections 4, 5, 6, and 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

**FOR FURTHER INFORMATION CONTACT:** Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

**SUPPLEMENTARY INFORMATION:** In accordance with 40 CFR 2.306(j), EPA has determined that ICF will require access to CBI submitted to EPA under sections 4, 5, 6, and 8 of TSCA to perform successfully work specified under this contract. EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6, and 8 of TSCA that EPA may provide ICF access to these materials on a need-to-know basis:

Under contract No. 68-D8-0116, ICF, 9300 Lee Highway, Fairfax, VA, will assist the Office of Toxic Substances' Economics and Technology Division by providing market, economic, and financial information to support activities under sections 4, 5, 6, and 8 of TSCA. All access to TSCA CBI under this contract will take place at EPA Headquarters and ICF's facilities. Upon completing review of the CBI materials, ICF will return all transferred materials to EPA.

Clearance for access to TSCA CBI under this contract is scheduled to expire on September 30, 1991.

ICF has been authorized for access to TSCA CBI at its facilities under the EPA "Contractor Requirements for the Control and Security of TSCA

Confidential Business Information" security manual. EPA has approved the ICF security plan, has performed the required inspection of its facilities, and has found them to be in compliance with the requirements of the manual. ICF personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: November 19, 1988.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 88-27665 Filed 11-30-88; 8:45 am]

BILLING CODE 6560-50-M

## GENERAL SERVICES ADMINISTRATION

### Federal Telecommunications Privacy Advisory Committee; Meeting

Notice is hereby given that the General Services Administration's (GSA's) Federal Telecommunications Privacy Advisory Committee will meet on December 16, 1988, from 8:30 a.m. to 4:00 p.m., at the General Services Administration Building, 18th and F Streets NW, Washington, DC, Room 5141B. The agenda will include a discussion of the Committee's report.

The meeting will be open to the public.

Questions regarding this meeting should be directed to John J. Landers, (202) 523-4968.

Dated: November 22, 1988.

John J. Landers,

Director, Office of Administration,  
Information Resources Management Service.

[FR Doc. 88-27710 Filed 11-30-88; 8:45 am]

BILLING CODE 6820-25-M

### Advisory Committee on the FTS2000 Procurement; Closed Meeting

Notice is hereby given that a two-day meeting of the General Services Administration's (GSA's) Advisory Committee on the FTS2000 Procurement is scheduled for Sunday, December 4, 1988, from 10:00 a.m. to 4 p.m. and Monday, December 5, 1988, from 8:30 a.m. to 4 p.m. The meetings will be held at the MITRE Corporation, 7525 Colshire Drive, McLean, VA. The agenda will include a review of the evaluation of the best and final offers and the award recommendation.

The meetings will be closed to the public because procurement sensitive matters will be discussed. The exemptions for closing the meetings are cited in 5 U.S.C. 552b (c) (4) and (9) (B) (Government in the Sunshine Act).

Fewer than fifteen days notice of this meeting is being provided due to scheduling difficulties.

Questions regarding this meeting should be directed to John J. Landers, (202) 523-5308.

Dated: November 22, 1988.

John J. Landers,

Director, Office of Administration,  
Information Resources Management Service.

[FR Doc. 88-27709 Filed 11-30-88; 8:45 am]

BILLING CODE 6820-25-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

#### Final Funding Priorities for Grants for Graduate Training in Family Medicine

The Health Resources and Services Administration announces the final funding priorities for Grants for Graduate Training in Family Medicine which will be used in addition to other criteria in making grant awards for Fiscal Year 1989.

Section 786(a) authorizes the Secretary to make grants to public or nonprofit private hospitals, accredited schools of medicine or osteopathy, and other public or private nonprofit entities to assist in meeting the cost of planning, developing and operating or participating in approved graduate training programs in the field of family medicine. In addition, section 786(a) authorizes assistance in meeting the cost of supporting trainees in such programs who plan to specialize or work in the practice of family medicine.

To receive support, programs must meet the requirements of regulations as set forth in 42 CFR Part 57, Subpart Q.

#### Review Criteria

The review of applications will take into consideration the following criteria:

1. The degree to which the proposed project provides for the project requirements;
2. The administrative and management ability of the applicant to carry out the proposed project in a cost-effective manner; and
3. The potential of the project to continue on a self-sustaining basis.

In addition, the following mechanisms may be applied in determining the funding of approved applications:

1. Funding preferences—funding of a specific category or group of approved applications ahead of other categories or groups of applications, such as completing continuations ahead of new projects.

2. Funding priorities—favorable adjustment of review scores when applications meet specified objective criteria.

3. Special considerations—enhancement of priority scores by merit reviewers based on the extent to which applications address special areas of concern.

Proposed funding priorities for Grants for Graduate Training in Family Medicine were published in the Federal Register of August 15, 1988 (53 FR 30717).

One comment was received during the 30-day comment period in support of attracting and retaining health professionals and increasing primary care services to special populations e.g., HIV/AIDS patients and the elderly. Therefore, the funding priorities as proposed are retained as follows:

1. Projects which satisfactorily demonstrate a net increase in enrollment of underrepresented minorities in proportion or more to their numbers in the general population or can document extent of demonstrated net increases of underrepresented minorities (i.e. Black, Hispanic and American Indian/Alaskan Native) over average enrollment of the past three years in postgraduate year (PGY) trainees.

2. Projects in which substantial training experience is in a PHS 332 health manpower shortage area and/or PHS 329 migrant health center, PHS 330 community health center or PHS 781 funded Area Health Education Center or State designed clinic/center serving an underserved population.

3. Applications proposing to develop, expand or implement curricula concerning ambulatory and inpatient case management of HIV/AIDS patients.

4. Applications which are innovative in their educational approaches to quality assurance/risk management activities, monitoring and evaluation of health care services and utilization of peer-developed guidelines and standards.

5. Applications proposing to provide substantial multidisciplinary geriatric training experiences in multiple ambulatory settings and inpatient and extended care facilities.

This program is listed at 13.379 in the *Catalog of Federal Domestic Assistance*. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR Part 100).

Dated: November 23, 1988.

John H. Kelso,

Acting Administrator.

[FR Doc. 88-27617 Filed 11-30-88; 8:45 am]

BILLING CODE 4160-15-M

### National Vaccine Injury Compensation Program; List of Petitions Received

**AGENCY:** Public Health Service, HHS.

**ACTION:** Notice.

**SUMMARY:** The Public Health Service (PHS) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program ("the Program"), as required by section 2112(b)(2) of the PHS Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Claims Court is charged by statute with responsibility for considering and acting upon the petitions.

#### FOR FURTHER INFORMATION CONTACT:

For information about requirements for filing petitions, and the Program generally, contact the Clerk, United States Claims Court, 717 Madison Place, NW., Washington, DC 20005, (202) 633-7257. For information on the Public Health Service's role in the Program, contact the Administrator, Vaccine Injury Compensation Program, Parklawn Building, 5600 Fishers Lane, Room 4-101, Rockville, MD 20857, (301) 443-6593.

**SUPPLEMENTARY INFORMATION:** The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa-10 *et seq.*, provides that those seeking compensation are to file a petition with the U.S. Claims Court and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated his responsibility under the Program to PHS. The Claims Court is directed by statute to appoint special masters to take evidence, conduct hearings as appropriate, and to submit to the Court proposed findings of fact and conclusions of law.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table set forth at section 2114 of the PHS Act. This table lists for each covered childhood vaccine the conditions which will lead to compensation and, for each condition,

the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the table and for conditions that are manifested after the time periods specified in the table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa-12(b)(2), requires that the Secretary publish in the *Federal Register* a notice of each petition filed. Set forth below is a list of petitions received by PHS through November 15, 1988. Section 2112(b)(2) also provides that the special master "shall afford all interested persons an opportunity to submit relevant, written information" relating to the following, which quote the statute:

1. Any allegation in a petition that the petitioner either:

(a) "sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table (see section 2114 of the PHS Act) but which was caused by" one of the vaccines referred to in the table, or

(b) "sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine" referred to in the table and

2. The existence of evidence "that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition."

This notice will also serve as the special master's invitation to all interested persons to submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Claims Court at the address listed above (under the heading "For Further Information Contact"), with a copy to PHS addressed to Director, Bureau of Health Professions, 5600 Fishers Lane, Room 8-05, Rockville, MD 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission.

Chapter 35 of Title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

### List of Petitions Received

1. Harry Gregson on Behalf of Ashley Gregson, Anchorage, Alaska, Claims Court Docket No. 88-1V.

2. Thomas Mikulich on Behalf of Jennifer Mikulich, West Allis, Wisconsin, Claims Court Docket No. 88-2V.

3. John and Phyllis McNerney on Behalf of Mark McNerney, Des Moines, Iowa, Claims Court Docket No. 88-3V.

4. Lewis and Maude Ray on Behalf of Shelby Ray, Maceo, Kentucky, Claims Court Docket No. 88-4V.

5. Yang Kue on Behalf of Khous Kue, Providence, Rhode Island, Claims Court Docket No. 88-5V.

6. Ann Heeley on Behalf of Brad Heeley, Sidney, Ohio, Claims Court Docket No. 88-6V.

7. Roland Brandt on Behalf of Carol Brandt, St. Paul, Minnesota, Claims Court Docket No. 88-7V.

8. James and Doris Hart on Behalf of Amanda Hart, Huber Heights, Ohio, Claims Court Docket No. 88-8V.

9. Marian Rick on Behalf of Brett Rick, Delevan, New York, Claims Court Docket No. 88-9V.

10. Richard and Charlotte Freeman on Behalf of Richard Freeman, Jr., St. Paul, Minnesota, Claims Court Docket No. 88-10V.

11. Gene and Shirley Pompey on Behalf of Shayla Pompey, Panama City, Florida, Claims Court Docket No. 88-11V.

12. Maria Marrero on Behalf of Edna Marrero, Brooklyn, New York, Claims Court Docket No. 88-12V.

13. Susan Workman on Behalf of Abby Workman, Chandler, Arizona, Claims Court Docket No. 88-13V.

14. Charlotte Willcox on Behalf of David Willcox, Clarksville, Indiana, Claims Court Docket No. 88-14V.

15. Daniel and Sandra Greene on Behalf of Chad Greene, Tarrant County, Texas (mother), Hamilton County, Tennessee (father), Claims Court Docket No. 88-41V.

16. Tatsu and Lucy Kubo on Behalf of Jessica Kubo, Dallas County, Texas, Claims Court Docket No. 88-42V.

17. Austin and Susan Campbell on Behalf of Austin B. Campbell, Jr., Bell County, Texas, Claims Court Docket No. 88-40V.

18. Barbara G. Zeagler, Sarasota, Florida, Claims Court Docket No. 88-18V.

19. Rose Marie Whitedge on Behalf of Fredrick Allen Whitedge, Henderson, Kentucky, Claims Court Docket No. 88-34V.

20. Tracey and John Prochaska on Behalf of Daniel Thomas Prochaska,

Sacramento, California, Claims Court Docket No. 88-21V.

21. Sharon and William E. Bagnal, Jr. on Behalf of William Craig Bagnal, Moncks Corner, South Carolina, Claims Court Docket No. 88-16V.

22. Jane Rich on Behalf of Rane Rich, Cheyenne, Wyoming, Claims Court Docket No. 88-19V.

23. Martin C. Philpott on Behalf of Lisa Faye Philpott, Roanoke, Virginia, Claims Court Docket No. 88-20V.

24. Brenda Meland on Behalf of Joshua Schroeder, Northwood, Iowa, Claims Court Docket No. 88-22V.

25. Kenneth and Mary Lou Schneider on Behalf of Glen Philip Schneider, Dallas, Texas, Claims Court Docket No. 88-23V.

26. Charles J. Brown on Behalf of Conway Beverley Carter Brown, Richmond, Virginia, Claims Court Docket No. 88-24V.

27. Linda W. Hanagan on Behalf of Eric L. Hagaman, Woodbury, Minnesota, Claims Court Docket No. 88-25V.

28. Donald J. Matthews Sr. on Behalf of Donald J. Matthews Jr., Holmes, Pennsylvania, Claims Court Docket No. 88-15V.

29. John and Carolyn Moorhead on Behalf of Donald Moorhead, Indiana, Pennsylvania, Claims Court Docket No. 88-27V.

30. Donald W. Newman on Behalf of Donald W. Newman, Jr., Tampa, Florida, Claims Court Docket No. 88-17V.

31. Frances L. Fairl on Behalf of Michael Lee Fairl, Ft. Worth, Texas, Claims Court Docket No. 88-28V.

32. Denise L. Scott on Behalf of Christopher James Gallagher, Arlington, Texas, Claims Court Docket No. 88-29V.

33. Paula Dianne Garlington on Behalf of Chris Damon Garlington, Rapides, Louisiana, Claims Court Docket No. 88-31V.

34. Linda Wedzicha on Behalf of Dax Y. Wedzicha, Dade County, Florida, Claims Court Docket No. 88-36V.

35. Nicole C. and Stephen R. Bevis on Behalf of Steven Michael Robert Bevis, Palm Beach, Florida, Claims Court Docket No. 88-45V.

36. Orville Danny and Joyce Evelyn Cope on Behalf of Nickie Brent Cope, Sneedville, Tennessee, Claims Court Docket No. 88-39V.

37. Haley Suzanne and Clyde D. Raines on Behalf of Joseph Daniel Raines, Morristown, Tennessee, Claims Court Docket No. 88-37V.

38. Thomas McKinley on Behalf of Benjamin McKinley, Centerville, Virginia, Claims Court Docket No. 88-35B.

39. Virgil M. and Judy S. Creek on Behalf of Virgil M. Creek II, Newburgh,

Indiana, Claims Court Docket No. 88-43V.

40. Velinda Clark on Behalf of She'Kena Clark, Augusta, Georgia, Claims Court Docket No. 88-44V.

41. Antonia L. Johnston on Behalf of Jason Johnston, Washtenaw County, Michigan, Claims Court Docket No. 88-30V.

42. Stephanie Riveaux on Behalf of Lisa Riveaux, Brooklyn, New York, Claims Court Docket No. 88-26V.

43. Dan and Julie Lolley on Behalf of Johnathan Geary Lolley, Riley, Kansas, Claims Court Docket No. 88-33V.

44. Mary Ellen and Harold David Strother on Behalf of Harold David Strother, Jr., Pensacola, Florida, Claims Court Docket No. 88-32V.

45. Larry and Nora Bazan on Behalf of Noah Bazan, Kleberg County, Texas, Claims Court Docket No. 88-38V.

Dated: November 23, 1988.

John H. Kelso,

Acting Administrator.

[FR Doc. 88-27690 Filed 11-30-88; 8:45 am]

BILLING CODE 4160-15-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### Announcement of Vacancy; Osage Tribal Education Committee

November 22, 1988.

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice, announcement of vacancy—Osage Tribal Education Committee.

**SUMMARY:** A Member At Large vacancy has occurred on the Osage Tribal Education Committee. The purpose of this announcement is to solicit nominations from individuals or from Osage organizations on behalf of nominees for this vacancy.

**DATES:** Applications and nominations must be made no later than January 3, 1989.

**ADDRESSES:** Deputy to the Assistant Secretary/Director—Indian Education (Indian Education Programs), Room 3512, 18th & C Streets NW., Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Dr. Virgil Akins, Bureau of Indian Affairs, Office of Indian Education Programs, Main Interior Building, Mail Stop Room 3522, 18th & C Streets NW., Washington, DC 20240, (202) 343-4871.

**SUPPLEMENTARY INFORMATION:** Because a Member At Large vacancy has occurred on the Osage Tribal Education Committee, this announcement solicits

nominations from individuals or from Osage organizations on behalf of nominees for this vacancy. All vacancies on the committee will be filled as described in 25 CFR 122.5(e)(5). The period of time for receiving applications shall not exceed 30 days with the expiration date to be announced by the assistant Secretary.

The requirements of the Member at Large are:

(a) Must be an adult person of Osage Indian Blood, who is an allottee or a descendant of an allottee; and

(b) May include residents who are living anywhere in the United States.

The nominee or his representative organization should submit a brief statement requesting that he/she be considered as a candidate for the vacancy and the reason for desiring to serve on the committee. If one is nominated by an Osage organization, a written statement from the nominee stating his/her willingness to serve on the committee must be included with the Osage organization nomination.

This notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8. Hazel E. Elbert,

Acting Assistant Secretary—Indian Affairs.  
[FR Doc. 88-27648 Filed 11-30-88; 8:45 am]

BILLING CODE 4310-02-M

### Bureau of Land Management

[NV-930-09-4212-24; Nev-066601]

#### Termination of Segregative Effect of Airport Lease; Nevada

November 23, 1988.

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice; Termination of segregative effect, Nevada.

**SUMMARY:** This notice terminates the segregative effect of airport lease, Nev-066601.

**EFFECTIVE DATE:** January 3, 1989.

**FOR FURTHER INFORMATION CONTACT:** Kenneth G. Walker, District Manager, Bureau of Land Management, Ely District Office, Star Route 5, Box 1, Ely, Nevada 89301, (702) 289-4865.

**SUPPLEMENTARY INFORMATION:** Pursuant to 43 CFR 2091.3-2(a)(2), the segregative effect, as it pertains to the following described lands, will terminate on January 3, 1989:

Mount Diablo Meridian, Nevada

T. 6 N., R. 66 E.,  
Sec. 15, SW ¼ SE ¼;

Sec. 22, W $\frac{1}{2}$ E $\frac{1}{2}$ ;  
Sec. 27, W $\frac{1}{2}$ NE $\frac{1}{4}$ .

The airport lease application was filed on October 25, 1965, at which time the lands became segregated from all forms of appropriation.

The lease has expired and the lessee, Federal Land Bank Association of Utah, no longer has a need for the facility. Improvements have been removed and the airstrip has been appropriately marked to indicate closure.

At 10:00 a.m., on January 3, 1989, the land will be open to the operation of the public land laws, subject to valid existing rights. All valid applications received prior to or at 10:00 a.m., on January 3, 1989, will be considered as simultaneously filed. All other applications received will be considered in the order of filing.

At 10:00 a.m., on January 3, 1989, the land will also be open to the operation of the mining laws.

Appropriation of lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

The land remains open to mineral leasing and material sale laws.

Fred Wolf,

Associate State Director, Nevada.

[FR Doc. 88-27649 Filed 11-30-88; 8:45 am]

BILLING CODE 4310-HC-M

[ES-030-09-4212-11; ES-00157-003;  
MNES-31841]

#### Land Classification for Recreation and Public Purposes, Carlton County, MN

**SUMMARY:** The following described parcels have been classified as suitable for disposal to the State of Minnesota by conveyance pursuant to the provisions of the Recreation and Public Purposes Act of 1926 (44 Stat. 741) as amended (43 U.S.C. 869):

Fourth Principal Meridian, Minnesota

1. MNES-31841, Carlton County: T.48N., R.16W., Tracts 37, 38, 39, 40, 41 and 42 totaling 4.22 acres

The purpose of the conveyance is the preservation of the islands in their

natural state and management as a part of Jay Cooke State Park.

Any patent issued under this notice shall be subject to the provisions in 43 CFR 2741.8. In the event of noncompliance with the terms of the patent, title to the land shall revert to the United States. Classification of this land segregates it from all appropriation except as to applications under the mineral leasing laws and the Recreation and Public Purposes Act.

This segregation will terminate upon issuance of a patent, or eighteen (18) months from the date of this notice, or upon publication of a Notice of Termination.

**COMMENTS:** For a period of 45 days from the date of first publication of this notice, interested parties may submit comments to: District Manager, Milwaukee District Office, Bureau of Land Management, P.O. Box 831, Milwaukee, Wisconsin 53201-0631.

**FOR FURTHER INFORMATION:** Detailed information concerning this application is available for review at the Milwaukee District Office, 310 West Wisconsin Avenue, Suite 225, Milwaukee, Wisconsin 53203; or by calling Larry Johnson at (414) 291-4413.

Bert Rodgers,

District Manager.

[FR Doc. 88-27707 Filed 11-30-88; 8:45 am]

BILLING CODE 4310-PN-9

[UT-060-09-4100-10]

#### Environmental Statements; MOAB District, UT

**AGENCY:** Bureau of Land Management, Moab, Utah, Interior.

**ACTION:** Change in grazing management plan on allotments involving four Wilderness Study Areas (WSA's).

**SUMMARY:** Notice of a 30-day comment period on an environmental analysis of impacts of changing grazing management on allotments which include portions of the following WSA's: Westwater Canyon UT-060-118, Wrigley Mesa UT-060-116, Jones Canyon UT-060-117, Black Ridge Canyons West CO-070-113A.

**FOR FURTHER INFORMATION CONTACT:** Bureau of Land Management, Grand Resource Area, P.O. Box M, Moab, Utah 84532, (801) 259-8193.

Gene Nodine,

District Manager.

[FR Doc. 88-2754 Filed 11-30-88; 8:45 am]

BILLING CODE 4130-DQ-M

[AZ-020-09-4212; AZA-21945 through AZA-21951]

#### Realty Action; Competitive Sale of Public Lands in Yavapai County; AZ

The Bureau of Land Management will offer seven tracts of land for public sale. These tracts are located near Wickenburg, Arizona. It has been determined that the sale of these tracts is consistent with section 203 of the Federal Land Policy and Management Act of October 21, 1976. These tracts will be sold at no less than the appraised fair market value.

The subject lands are located at:

Gila and Salt River Meridian, Yavapai County, Arizona

Serial No.	Legal description	Acres
AZA-21945.....	T. 8 N., R. 5 W., sec. 15, NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ .	10.00
AZA-21946.....	T. 8 N., R. 5 W., sec. 15, SE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ .	10.00
AZA-21947.....	T. 8 N., R. 5 W., sec. 15, W $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ .	20.00
AZA-21948.....	T. 8 N., R. 5 W., sec. 15, NW $\frac{1}{4}$ NW $\frac{1}{4}$ .	40.00
AZA-21949.....	T. 8 N., R. 5 W., sec. 15, N $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ .	20.00
AZA-21950.....	T. 8 N., R. 5 W., sec. 15, W $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ .	20.00
AZA-21951.....	T. 8 N., R. 5 W., sec. 15, E $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ .	20.00

The above aggregates 140.00 acres of land in Yavapai County.

Federal law limits the sale of this land to United States citizens, corporations subject to the law of any State or of the United States, States, State instrumentalities or political subdivisions authorized to hold property, and any entity legally capable of conveying and holding lands or interests therein under the laws of the State within which the lands to be conveyed are located. The purchaser is deemed to be the individual(s) or corporation that will actually take title to the land from the government; the citizenship limitation does not apply to agents who bid on behalf of an associate, client, or employer.

All of the parcels listed will be subject to the following reservations when patented.

1. A right-of-way for ditches and canals constructed by the authority of the United States. (Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.)

2. A reservation of all oil and gas to the United States with the right to prospect for, mine, and remove such deposits.

The following tracts will be sold subject to the following reservations:

1. Tracts AZA-21945-AZA-21951 will be sold subject to BLM road right-of-way A-18698.

2. Tract AZA-21949 will be subject to BLM road right-of-way A-18699.

Additionally, all parcels will be sold subject to the Wickenburg Inn grazing lease No. AZ-026-2530. The purchaser of the land will honor the terms and conditions of this lease until February 28, 1991. The purchaser will not charge more than the BLM grazing fee schedule for a given year. Modification of these terms and conditions will occur only through mutual agreement between the purchaser and the lessee.

The successful bidder will also be required to purchase the mineral estate at or before the time of final payment.

Upon publication of this notice in the *Federal Register*, the land described above will be segregated from all forms of non-discretionary appropriation under the public land laws, including the mining laws, except the mineral leasing laws, for a period of 270 days or until the lands are sold. The segregative effect may otherwise be terminated by the authorized officer by publication of a termination notice in the *Federal Register*, prior to the expiration of the 270 day period.

Additional information regarding these tracts of land will be contained in the sales brochure made available at least 30 days prior to the sale. This additional information includes: (1) Bidding instructions, (2) date(s) of sale, (3) appraised fair market value of the tracts, (4) any reservations or terms and conditions that apply to the tracts of land, (5) maps showing the location of the tracts of land, (6) requirements of parties wishing to bid, and (7) payment procedures for this successful bidder.

For a period of forty-five (45) days from the date of this notice, interested parties may submit comments regarding the proposed action. Any adverse comments will be evaluated by the District Manager who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of the Interior. Comments regarding this action or requests for additional information should be sent to the Phoenix District Manager, Bureau of Land Management, 2015 W. Deer Valley Road, Phoenix, Arizona 85027.

Henri R. Bisson,  
District Manager.

Date: November 22, 1988.

[FR Doc. 88-27703 Filed 11-30-88; 8:45 am]

BILLING CODE 4310-32-M

[CA-010-09-3110-CAPL; Casefile # CA 23587]

### Realty Action; Exchange of Public and Private Lands in Kern and San Luis Obispo Counties, CA

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action, CA 23587.

**SUMMARY:** The following described lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716):

Mt. Diablo Meridian, California

T.32S., R.32E.

Sec. 22 N1/2N1/2, SE1/4NE1/4, SW1/4NW1/4, W1/2SW1/4.

Containing 320 acres of public land.

In exchange for these lands, the United States will acquire an equal value of lands within the Carrizo Plain Natural Area from The Nature Conservancy, a private, nonprofit organization.

**SUPPLEMENTARY INFORMATION:** The purpose of this exchange is to acquire a portion of the non-federal lands within the Carrizo Plain Natural Area. This Natural Area would promote the conservation of threatened and endangered species and preserve a representative sample of the historic southern San Joaquin Valley flora and fauna.

The ultimate goal of the Bureau of Land Management is to acquire approximately 155,000 acres within the Natural Area. A secondary purpose of the exchange is to consolidate the Bureau lands and reduce the number of scattered, isolated Bureau parcels that are difficult for the Bureau to manage. The public interest will be well served by completing the exchange.

Publication of this notice in the *Federal Register* segregates the public lands from the operation of the public land laws, mining laws, and mineral leasing laws. The segregative effect will end upon issuance of patent or two years from the date of publication in the *Federal Register*, whichever occurs first.

After the exchange is completed, The Nature Conservancy plans to offer the former BLM land for sale to adjacent landowners or other interested parties. The Nature Conservancy's representative can be contacted at (415) 325-9669; 541 Bryson, Palo Alto, CA 94306.

The exchange will be on an equal value basis. Acreage of the private land will be adjusted to approximate equal

values. Full equalization of value will be achieved by future exchanges under a pooling agreement with the Nature Conservancy.

*Land transferred from the United States will retain the following reservation:*

A right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

**FOR FURTHER INFORMATION CONTACT:** Bureau of Land Management, Caliente Resource Area Office, 4301 Rosedale Highway, Bakersfield, California 93308; (805) 861-4236.

**DATE:** For a period of 45 days from the date of publication of this notice in the *Federal Register*, interested parties may submit comments to the Area Manager, Caliente Resource Area Office, Bureau of Land Management, at the above address. Objections will be reviewed by the State Director who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of Interior.

Date: November 4, 1988.

Glenn A. Carpenter,  
Caliente Resource Area Manager.  
[FR Doc. 88-26120 Filed 11-30-88; 8:45 am]  
BILLING CODE 4310-40-M

[CO-010-08-4212-13: COC-45800]

### Realty Action; Exchange of Lands in Jackson and Grand Counties, CO

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action.

**SUMMARY:** Pursuant to section 206 of the Federal Land Policy and Management Act of 1986 (43 U.S.C. 1716, the Bureau of Land Management, Kremmling Resource Area has identified the following described lands in Jackson and Grand Counties as suitable for disposal by exchange.

**Selected Land: 6th Principal Meridian**

T. 5N., R. 81W.,

Sec. 4:

Lot 3 .....	39.34
Lot 4 .....	39.35
W 1/2 SE 1/4 .....	80
SE 1/4 SW 1/4 .....	40
N 1/2 SW 1/4 .....	80
S 1/2 NW 1/4 .....	80

Sec. 5:

NE 1/4 SE 1/4 .....	40
SE 1/4 NW 1/4 SE 1/4 .....	10

Sec. 7: Lot 6 .....

45.10

## Sec. 9:

Lot 2.....	43.99
Lot 5.....	44.60
Lot 6.....	44.59
Lot 10.....	45.14
Lot 11.....	45.16
Lot 12.....	45.19
Lot 14.....	45.73
Lot 15.....	45.71

T. 5N., R. 81W.,

## Sec. 17:

Lot 1.....	46.24
Lot 2.....	46.25
Lot 8.....	46.48

Containing 952.87 acres of public land, more or less.

In exchange for these lands, the United States will acquire the following described lands and interests from Mr. Everett Randleman.

**Offered Land and Interest in Land: 6th Principal Meridian**

T. 7N., R. 80W.,

Sec. 27: E½SW¼, SW¼SW¼, SE¼.....	280
Sec. 28: SE¼.....	160
Sec. 34: NW¼NE¼, NW¼.....	200

Containing 640 acres of non-federal land, more or less.

One third (⅓) interest in the 3.5 second feet of water allowed to flow in the Burke Ditch under Priority No. 54.

All interest in the 12 second feet of water allowed to flow in the New Burke Ditch under Priority No. 182.

**FURTHER INFORMATION AND PUBLIC**

**COMMENT:** Additional information concerning this exchange, including the planning documents and environmental assessment, is available for review in the Kremmling Resource Area Office at 1116 Park Avenue, Kremmling, Colorado 80459.

For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager, Craig District Office, Bureau of Land Management, 455 Emerson Street, Craig, Colorado 81625. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue his final determination. In the absence of objections, this realty action will become a final determination of the Department of the Interior.

**SUPPLEMENTARY INFORMATION:**

The purpose of this exchange is to facilitate improved resource management and to dispose of scattered, difficult to manage public land parcels while consolidating ownership of other public lands.

The values of lands to be exchanged are approximately equal: full equalization of value will be achieved

through acreage adjustment, or by cash payment in an amount not to exceed 25 percent of the value of the lands being transferred out of federal ownership.

The exchange will be subject to:

1. A reservation to the United States of a right-of-way for ditches and canals constructed by the authority of the United States in accordance with 43 U.S.C. 945.

2. All mineral resources and related rights shall be reserved to the United States together with the right to prospect for, mine and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at this BLM office.

3. All valid existing rights and reservations of record including the following: Powerline rights-of-way C-8481 and C-8482. Access road right-of-way D-057181.

4. Continued grazing use for a period of two years consistent with grazing permits 1746, 1832, 1737, unless waived.

Publication of this notice in the **Federal Register** segregates the public lands from operation of the public land laws and the mining law, except for mineral leasing and exchanges under section 206 of FLPMA. The segregated effect will end upon issuance of patent or two years from the date of publication, whichever occurs first.

Jerry L. Kidd,

*Acting District Manager.*

[FR Doc. 88-27706 Filed 11-30-88; 8:45 am]

BILLING CODE 4310-JB-M

[NV-930-09-4212-11; N-48112]

**Realty Action; Lease of Public Land for Recreation and Public Purposes; Carson City, NV**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Realty Action classifying public land.

**SUMMARY:** The following described 15 acres of public land has been examined and identified as suitable to be classified for lease under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869, *et seq.*):

Mount Diablo Meridian, Nevada

T. 15 N., R. 21 E.,

Sec. 6, W½NE¼W½ of Lot 2 of the NW¼, NW¼W½ of Lot 2 of the NW¼.

A 5-year lease with the option to renew will be offered to Carson City for the subject 15 acres of land to be used as a model airplane-radio control flying field.

The land is not required for federal purposes. Classification and issuance of a lease is consistent with Bureau planning for this area and would be in the public interest.

The lease, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will be subject to:

1. Those rights for transmission line purposes granted to Sierra Pacific Power Company by Right-of-Way Grant Nev-059133.

Detailed information concerning this action is available for review at the Bureau of Land Management Carson City District Office.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws, including location under the general mining laws, but not the Recreation and Public Purposes Act, the mineral leasing laws, and material sales. The segregative effect will terminate as specified in an opening to be published in the **Federal Register**.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89706. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land described in this notice will become effective 60 days from the date of publication in the **Federal Register**.

Dated: November 22, 1988.

James W. Elliott,

*District Manager.*

[FR Doc. 88-27702 Filed 11-30-88; 8:45 am]

BILLING CODE 4310-HC-M

[NM-060-4760-90; 73098]

**Realty Action; Noncompetitive Sale of Public Lands in Eddy County, NM**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action—New Mexico 73098.

**SUMMARY:** The following land has been found suitable for direct sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713), at not less than the appraised fair market value. The land will not be offered for sale until at least 60 days after the date of this notice.

T. 17 S., R. 30 E., NMPM

Sec. 21: Lots 91, 92, 93, containing 2.6 acres

The land is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from date of this notice, whichever occurs first.

The land is being offered by direct sale to Eddy County for use as a transfer station for refuse collection. Refuse will be regularly transported to a permanent landfill location. The subject lands are not required for any other Federal purpose and meet the disposal criteria of the regulations contained in 43 CFR 2710.03(a) and 43 CFR 2711.3-3(a)(2).

The patent, when issued, will contain certain reservations to the United States and will be subject to three existing

rights-of-way. Detailed information concerning these reservations, as well as specific conditions of the sale are available for review at the Carlsbad Resource Area Office, Bureau of Land Management, 101 East Mermod Street, Carlsbad, New Mexico 88220.

For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager at 1717 West Second Street (P.O. Box 1497), Roswell, New Mexico 88201. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue a final determination. In absence of objections, this realty action

will become the final determination of the Department of the Interior.

Francis R. Cherry, Jr.,  
District Manager.

[FR Doc. 88-27705 Filed 11-30-88; 8:45 am]

BILLING CODE 4310-FB-M

[OR-010-09-4212-14:GP9-041]

#### Realty Action; Direct Sale of Public Land in Lake County, OR

The following lands are suitable for direct sale under section 203 and 209 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713 (and 1719), at no less than the appraised fair market value.

Serial No.	Legal description	Acreage	Value	Minimum deposit (percent)	Bidding procedure
OR 39536	T.27S., R.19E. Willamette Meridian, Oregon Sec. 18: NW¼SE¼, Sec. 20: NE¼NW¼, Sec. 28: E¼SW¼, Sec. 29: SE¼SE¼.	200	\$12,250	20	Direct.

The above described land(s) are hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above cited statute. The segregative effect of the notice of realty action shall terminate upon issuance of patent or other document of conveyance to such lands, upon publication in the *Federal Register* of a termination of the segregation or 270 days from the date of this publication, whichever occurs first.

The sale will be held 60 days after publication of this notice at the Bureau of Land Management, Lakeview District Office, P.O. Box 151, 1000 South Ninth Street, Lakeview, Oregon 97630. These parcels represent four (4) isolated parcels which are difficult and uneconomic to manage as part of the public lands and are not suitable for management by another Federal Agency. No significant resource values will be affected by this disposal. The sale is in conformance with BLM's planning for the land involved and the public interest will be best served by offering this land for sale.

#### Bidders Qualifications

Bidders must be U.S. citizens, 18 years of age or more; a state or state instrumentality authorized to hold property; or a corporation authorized to own real estate in the state in which the land is located.

#### Direct Sale Procedures

Direct sale procedures are being used since competitive sale is not appropriate and the public interest would be best

served by a direct sale. Benefits to direct sale would be: (1) The elimination of scattered isolated public land inholdings from an existing ranch property; and (2) to allow the ranch to acquire title to the inholdings which it currently uses as an integral part of the ranch operation.

The parcels identified in this notice are to be offered to ZX Land and Cattle Company, using direct sale procedures authorized under 43 CFR 2711.3-3. The land will be sold at fair market value to the designated purchaser without competitive bidding. The designated purchaser will be required to render the minimum percent bid deposit indicated, by the sale date, and the balance of the purchase price within 180 days from the date of sale. If the required deposit is not submitted and the balance of the full purchase price not rendered within 180 days of the sale date, the preference right is cancelled, and the deposit will be forfeited.

#### Terms and Conditions of the Sale

The terms, conditions and reservations applicable to the sale are as follows:

1. As to the parcels identified in this notice, all minerals will be reserved to the United States in accordance with section 209 of the Federal Land Policy and Management Act of October 21, 1976; and

2. Rights-of-way for ditches and canals will be reserved to the United States under 43 U.S.C. 945; and

3. Patents will be issued subject to all valid existing rights and reservations of record; and

4. The BLM may accept or reject any and all offers, or withdraw any land or interest in land from sale if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with the Federal Land Policy and Management Act or other applicable laws.

#### Unsold Parcels

If any of the parcels identified by serial number OR 39536 are not sold on the date of the sale, the parcels will then be offered to the public, using competitive sale procedures 43 CFR 2711.3-3, until sold or withdrawn from the market. Sealed bids will be solicited at the BLM, Lakeview District Office, during regular business hours, 7:45 a.m. to 4:30 p.m. All bids received will be opened the first Wednesday of each subsequent month. To be considered, bids must be received by 10:00 a.m. on the day of the bid opening.

#### Comments

For a period of 45 days from the date of publication of this notice in the *Federal Register*, interested parties may submit comments to the District Manager, Bureau of Land Management, Lakeview, Oregon. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Date: November 23, 1988.  
 Judy Ellen Nelson,  
*District Manager.*  
 [FR Doc. 88-27699 Filed 11-30-88; 8:45 am]  
 BILLING CODE 4310-33-M

[WY-060-09-4212-14, WYW-88722]

### Reschedule of Realty Action for Public Lands in Goshen County, WY

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Reschedule of sale date for realty action in Goshen County, Wyoming.

**SUMMARY:** The sale date for land parcel WYW88722, T. 23 N., R. 62 W., Sixth Principal Meridian, Section 29, W $\frac{1}{2}$ SW $\frac{1}{4}$ , Section 32, NW $\frac{1}{4}$ , for 240 acres is hereby rescheduled for January 22, 1989. The sale will be held according to the procedures and conditions of the Notice of Realty Action published in the Federal Register on Thursday, July 30, 1987 (52 FR 28488-28-489).

**FOR FURTHER INFORMATION CONTACT:** Bill Mortimer, Area Manager, Platte River Resource Area Office, P.O. Box 2420, 815 Connie Street, Mills, WY 82644, phone (307) 261-5001.

Katheryne Alexander,  
*Billing District Manager.*

Date: November 25, 1988.  
 [FR Doc. 88-27704 Filed 11-30-88; 8:45 am]  
 BILLING CODE 4310-22-M

[CO-942-09-4520-12]

### Colorado; Filing of Plats of Survey

November 22, 1988.

The plat of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 a.m., November 22, 1988.

The supplemental plat creating new lot 31 in section 25, T. 14 S., R. 70 W., Sixth Principal Meridian, Colorado was accepted November 2, 1988.

This survey was executed to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado, 80215.

Marlin G. Livermore,  
*Acting Chief, Cadastral Surveyor for Colorado.*

[FR Doc. 88-27653 Filed 11-30-88; 8:45 am]  
 BILLING CODE 4310-JB-M

[CO-932-09-4214-10; C-48465]

### Proposed Withdrawal; Opportunity for Public Meeting; Colorado; Correction

November 21, 1988.

In 53 FR 12826 dated Tuesday, April 19, 1988, second column, make the following corrections:

1. T. 10 S., R. 103 W., sec. 22, lots 5 thru 8, NE $\frac{1}{4}$ NW $\frac{1}{4}$ , E $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ , and E $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ , is corrected to read sec. 22, lots 5 thru 8, NE $\frac{1}{4}$ NW $\frac{1}{4}$ , E $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$  and E $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ .

2. T. 10 S., R. 104 W., sec. 34, N $\frac{1}{2}$ N $\frac{1}{2}$ N E $\frac{1}{4}$ , N $\frac{1}{2}$ N $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ , W $\frac{1}{2}$ NW $\frac{1}{4}$  and NW $\frac{1}{4}$ SW $\frac{1}{4}$ , is corrected to read sec. 34, N $\frac{1}{2}$ N $\frac{1}{2}$ NE $\frac{1}{4}$ , N $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ , W $\frac{1}{2}$ NW $\frac{1}{4}$ , and NW $\frac{1}{4}$ SW $\frac{1}{4}$ .

Andrew J. Senti,

*Acting Chief, Branch of Realty Programs.*

[FR Doc. 88-27708 Filed 11-30-88; 8:45 am]  
 BILLING CODE 4310-JB-M

### Fish and Wildlife Service

#### Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

*Applicant:* Paul C. Kao, Northridge, CA, PRT-733207.

The applicant requests a permit to purchase one male and two female captive-hatched nene geese (*Nesochen (-Branta) sandvicensis*) from Mr. Mike Lubbock, Sylvan Heights Waterfowl, Sylva, North Carolina, for captive breeding purposes.

*Applicant:* AAZPA Species Survival Plan for Black Rhino, c/o Ed Maruska, Cincinnati Zoo, Cincinnati, OH, PRT-733166.

The applicant requests a permit to import five pairs of wild-caught black rhinoceroses (*Diceros bicornis minor*) from Zimbabwe for captive breeding in accordance with the guidelines set forth by the AAZPA, Game Conservation International, and the Government of Zimbabwe. The rhinos will be placed with the following institutions for breeding: La Coma Ranch, Texas; San Diego Zoo, California; Fort Worth Zoo, Texas; Dallas Zoo, Texas; and Milwaukee Zoo, Wisconsin.

*Applicant:* LSA Associates, Inc., Point Richmond, CA, PRT-733333.

The applicant requests a permit to live-trap and release Stephens' kangaroo rats (*Dipodomys stephensi*) in Riverside County, California, for determination of this species' presence in proposed project sites.

*Applicant:* Zoological Society of San Diego, San Diego, CA, PRT-733111.

The applicant requests a permit to import one female harpy eagle (*Harpia harpyja*) from the Instituto Nacional para el Desarrollo de Recursos Naturales Renovables, Bogota, Columbia, for the purpose of enhancement of propagation. This eagle was removed from the wild and has been held in captivity since 1978.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 403, 1375 K Street NW., Washington, DC 20005, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 27329, Washington, DC 20038-7329.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate applicant and PRT number when submitting comments.

Date: November 25, 1988.

R.K. Robinson,  
*Chief, Branch of Permits, U.S. Office of Management Authority.*

[FR Doc. 88-27722 Filed 11-30-88; 8:45 am]  
 BILLING CODE 4310-AN-M

#### Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

*Applicant:* San Diego Zoological Society, San Diego, CA, PRT-732876.

The applicant requests a permit to import one captive-born male Bactrian deer (*Cervus elaphus bactrianus*) from the Zoologischer Garten Koln, West Germany, for the purpose of enhancement of propagation.

*Applicant:* Steve Oehlenschlaeger, Maple Grove, MN 55369, PRT-732816.

The applicant requests a permit to purchase in interstate commerce one pair of captive-born nene geese (*Nesochen (=Branta) sandvicensis*) from Nugent's Wild Waterfowl, Kimbolton, Ohio, for enhancement of propagation.

*Applicant:* Zoo Atlanta, Atlanta, GA, PRT-732817.

The applicant requests a permit to import one female captive-born drill (*Papio leucophaeus*) from Wilhelma Zoo, Stuttgart, West Germany, for enhancement of propagation.

**Applicant:** Duane Patrick, Bradford, TN, PRT-732814.

The applicant requests a permit to purchase in interstate commerce three pair of captive born nene geese (*Nesochen* (= *Branta*) *sandvicensis*) from Charles Nugent, Kimbolton, Ohio, for enhancement of propagation.

**Applicant:** Burnet Park Zoo, Syracuse, NY, PRT-732960.

The applicant requests a permit to export up to 500 ml. of plasma taken from one captive-held male Asian elephant (*Elephas maximus*) to Cheryl Niemuller-Hare, Science Department, Ontario Veterinary College, Guelph, Ontario, Canada, for the purpose of scientific research.

**Applicant:** J. Gordon Barrows, Winston, GA, PRT-719755.

The applicant requests a permit to sell in interstate commerce and export in foreign commerce artificially propagated specimens of the following endangered cacti: *Coryphanta minima*

(= *Mammillaria nelliae*), *C. ramillosa*, *Echinocereus fendleri* v. *kuenzleri* (= *E. reichenbachii* v. *albertii*), *E. triglochidiatus* v. *arizonicus*, *E. t. v. inermis*, *E. viridiflorus* v. *davisii*, *E. lloydii*, and *Pediocactus knowltonii* for enhancement of propagation.

**Applicant:** San Diego Zoological Society, San Diego, CA, PRT-732995.

The applicant requests a permit to import one captive-born female crested gibbon (*Hylobates concolor*) from the Hong Kong Zoological and Botanical Gardens, Hong Kong, for the purpose of enhancement of propagation.

**Applicant:** San Diego Zoological Society, San Diego, CA, PRT-732996.

The applicant requests a permit to import one male and two female captive-born Siberian musk deer (*Moschus moschiferus moschiferus*) from the Academy of Sciences, Institute of Evolutionary Animal Morphology and Ecology, Moscow, Russia, for the purpose of enhancement of propagation.

**Applicant:** Arthur C. Searles, East Patchogue, NY, PRT-732973.

The applicant requests a permit to import two pairs of captive-hatched scarlet-chested (= *spendid*) parakeets (*Neophema splendida*) and two pairs of captive-hatched turquoise parakeets (*Neophema pulchella*) from John Bennett, Ontario, Canada, for the purpose of enhancement of propagation.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm), Room 403, 1375 K. Street NW., Washington, DC 20005, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 27329, Washington, DC 20038-7329.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate applicant and PRT number when submitting comments.

Date: November 25, 1988.

R.K. Robinson,

Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 88-27723 Filed 11-30-88; 8:45 am]

BILLING CODE 4310-AN-M

### Minerals Management Service

#### Development Operations Coordination Document; Peltó Oil Co.

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

**SUMMARY:** Notice is hereby given that Peltó Oil Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 9698, Blocks 42 and 43, South Pass Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Venice, Louisiana.

**DATE:** The subject DOCD was deemed submitted on November 22, 1988. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

**ADDRESSES:** A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

### FOR FURTHER INFORMATION CONTACT:

Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2867.

**SUPPLEMENTARY INFORMATION:** The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: November 23, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-27655 Filed 11-30-88; 8:45 am]

BILLING CODE 4310-MR-M

#### Development Operations Coordination Document; Union Texas Petroleum

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

**SUMMARY:** Notice is hereby given that Union Texas Petroleum has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5387, Block 236, East Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Intracoastal City, Louisiana.

**DATE:** The subject DOCD was deemed submitted on November 22, 1988. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of

the plan from the Minerals Management Service.

**ADDRESSES:** A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday) A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

**FOR FURTHER INFORMATION CONTACT:** Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2876.

**SUPPLEMENTARY INFORMATION:** The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: November 23, 1988.

**J. Rogers Percy,**  
Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-27656 Filed 11-30-88; 8:45 am]  
BILLING CODE 4310-MR-M

## National Park Service

### Farmington River Study Committee, Nominating Subcommittee; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770, 5 U.S.C. App. 1 § 10), that a meeting of the Nominating Subcommittee of the Farmington River Study Committee will be held on Saturday, December 3. The meeting will convene at 3:30 p.m. at the Otis Town Hall, Rte 8, following a field trip of the full Committee.

The Committee was established pursuant to Pub. L. 99-590. The purpose of the Committee is to consult with the Secretary of the Interior and to advise the Secretary in conducting the Wild and Scenic River Study of two segments of the Farmington River.

The meeting of the subcommittee is open to the public. Members of the public may follow the committee on the field trip which departs from the Otis Town Hall at 9 a.m. For additional information, contact: Public Affairs Office, North Atlantic Regional Office, National Park Service, tel: (617) 565-8888.

Date: November 23, 1988.

**John J. Guthrie,**  
Acting Regional Director.

[FR Doc. 88-27627 Filed 11-30-88; 8:45 am]  
BILLING CODE 4310-70-M

## INTERSTATE COMMERCE COMMISSION

[Docket No. AB-6 (Sub-No. 303X)]

### Burlington Northern Railroad Co.; Abandonment Exemption in Barnes County, ND

Applicant has filed a notice of exemption under 49 CFR Part 1152, Subpart F—*Exempt Abandonments* to abandon its 7.67-mile line of railroad between milepost 9.64 near Rogers and milepost 17.31 near Dazey, in Barnes County, ND.

Applicant has certified that: (1) No local or overhead traffic has moved over the line for at least 2 years; and (2) no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective December 30, 1988 (unless stayed pending reconsideration). Petitions to stay regarding matters that do not involve environmental issues<sup>1</sup> and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2)<sup>2</sup> must be filed by December 12, 1988. Petitions to stay regarding matters that involve environmental issues and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by December 20, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Ethel A. Allen, Assistant General Counsel, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, resulting from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by December 5, 1988. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275-7316.

A notice to the parties will be issued if use of the exemption is conditioned

<sup>1</sup> A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 4 I.C.C. 2d 400 (1988).

<sup>2</sup> See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d 164 (1987), and final rules published in the *Federal Register* on December 22, 1987 (53 FR 48440-48446).

upon environmental or public use conditions.

Decided: November 25, 1988.

By the Commission.

Jane F. Mackall,

Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-27738 Filed 11-30-88; 8:45 a.m.]

BILLING CODE 7035-01-M

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Records Schedules; Availability and Request for Comments

**AGENCY:** National Archives and Records Administration, Office of Records Administration.

**ACTION:** Notice of availability of proposed records schedules; request for comments.

**SUMMARY:** The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 USC 3303a(a).

**DATE:** Requests for copies must be received in writing on or before January 17, 1989. Once the appraisal of the records is completed, NARA will send a copy of the schedules. The requester will be given 30 days to submit comments.

**ADDRESS:** Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the time of the requesting agency.

**SUPPLEMENTARY INFORMATION:** Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order

to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

### Schedules Pending

1. Department of the Air Force (N1-AFU 88-7 and -19). Facilitative records relating to communications projects program management and acquisition.

2. Department of the Air Force (N1-AFU-88-35). Nuclear Reactor maintenance and operation records.

3. Department of the Army (N1-AU-88-13). Routine textual and machine-readable records relating to the management of U.S. Army Libraries.

4. Federal Emergency Management Agency, Office of Training (N1-311-88-2). National Emergency Training Center application and stipend agreement forms.

5. Department of Justice, Executive Secretariat, Information Management Staff (N1-60-88-14). Citizen mail of the Executive Secretariate.

6. National Labor Relations Board (N1-25-88-1). Electronic records created by routine automated case tracking and handling, personnel, and procurement systems.

7. National Security Agency (N1-457-89-4). This NSA schedule is classified in

the interest of national security pursuant to Executive Order 12356 and is further exempt from public disclosure pursuant to the National Security Act of 1947, 50 U.S.C. 403(d)(3), and Pub. L. 86-36.

8. Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation (N1-431-88-5). Regulatory Effectiveness Reviews (RER) of selected nuclear power plants.

9. Department of State, Bureau of Oceans and International Environmental and Scientific Affairs, Coordinator for Population Affairs (N1-59-88-36). Reference, administrative, and facilitative records. Records documenting policies and programs are permanent.

10. Tennessee Valley Authority Office of Power, Division of Energy Use and Distributor Relations (N1-142-87-10). Comprehensive records schedule.

11. Tennessee Valley Authority Office of Power, Division of Energy Use and Distributor Relations (N1-142-88-12). Commercial and Industrial Energy Survey records and database.

12. Department of Transportation (N1-398-88-2). Copies of proposed and final rules as published in the Federal Register and related documents.

Dated: November 21, 1988.

Claudine J. Weiher,

Acting Archivist of the United States.

[FR Doc. 88-27652 Filed 11-30-88; 8:45 am]

BILLING CODE 7515-01-M

## NUCLEAR REGULATORY COMMISSION

### Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of the Office of Management and Budget review of information collection.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* 10 CFR Part 72—Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High Level Radioactive Waste.

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* Required reports are collected and evaluated on a continuing basis as events occur. Applications for new licenses or amendments may be submitted at any time. Applications for renewal of licenses would be required every 20 years for an Independent Spent Fuel Storage Facility (ISFSI) and every 40 years for a Monitored Retrievable Storage (MRS) facility.

5. *Who will be required or asked to report:* Licenses and applicants for a license to possess power reactor spent fuel and other radioactive materials associated with spent fuel storage in an ISFSI, and the Department of Energy for licenses to receive, transfer, package and possess power reactor spent fuel, high-level waste, and other radioactive materials associated with spent fuel and high-level waste storage in an MRS.

6. *An estimate of the number of responses:* 12.

7. *An estimate of the total number of hours needed to complete the requirement or request:* Approximately 1,191 hours per response for applications and reports, plus approximately 5,175 hours annually per recordkeeper. The total industry burden is 18,267 hours.

8. *An indication of whether section 3504(h), Pub. L. 96-511 applies:* Not applicable.

9. *Abstract:* 10 CFR Part 72 establishes requirements, procedures, and criteria for the issuance of licenses to possess power reactor spent fuel and other radioactive materials associated with spent fuel storage, in an independent spent fuel storage installation, and requirements for the issuance of licenses to the Department of Energy to receive, transfer, package, and possess power reactor spent fuel and high level radioactive waste, and other associated radioactive materials, in a monitored retrievable storage facility.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW., Washington, DC.

Comments and questions should be directed to the OMB reviewer, Nicolas B. Garcia, (202) 395-3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492-8132.

Dated at Bethesda, Maryland, this 18th day of November 1988.

For the Nuclear Regulatory Commission,  
William G. McDonald,

Director, Office of Administration and Resources Management.

[FR Doc. 88-27078 Filed 11-30-88; 8:45 am]

BILLING CODE 7590-01-M

## Advisory Panel For Decontamination of Three Mile Island, Unit 2; Renewal

The United States Nuclear Regulatory Commission (NRC) announces the renewal of the Advisory Panel for Decontamination of Three Mile Island, Unit 2. It has been determined that renewal of the charter for this advisory committee is in the public interest in order for NRC to continue to receive public input and enhance public understanding of the major activities required to decontaminate and safely clean up the damage at Three Mile Island Nuclear Power Station Unit 2. The charter which continues the Panel through November 28, 1990, has been filed with the appropriate Congressional Committees and the Library of Congress.

For Further Information Contact:  
Michael Masnik Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555; 301-492-1373.

Date: November 28, 1988.  
John C. Hoyle,  
Advisory Committee Management Officer.  
[FR Doc. 88-27679 Filed 11-30-88; 8:45 am]  
BILLING CODE 7590-01-M

[Docket No. 40-8943]

## Draft Finding of No Significant Impact Regarding the Issuance of a Source Material License To Ferret Exploration Co. of Nebraska, Inc., Crow Butte Commercial Operation Location in Dawes County, NE

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of draft finding of no significant impact.

### 1. Proposed Action

The proposed administrative action is to issue a commercial Source and Byproduct Material License. This license would allow in situ leach uranium recovery at the Crow Butte Operation located in Dawes County, Nebraska.

### 2. Reasons for Draft Finding of No Significant Impact

An environmental assessment was prepared by the staff at the U.S. Nuclear Regulatory Commission (NRC) and issued by the Commission's Uranium Recovery Field Office, Region IV. The environmental assessment performed by the Commission's staff evaluated potential impacts on-site and off-site due to radiological releases that may occur during the course of the operation. Documents used in preparing the assessment included operational data

from the Crow Butte Research and Development in situ leach operation and the licensee's application dated October 7, 1987. Based on the review of the operational data and the application materials, the Commission has determined that no significant impact will result from the proposed action, and therefore, an Environmental Impact Statement is not warranted.

The following statements support the draft finding of no significant impact and summarize the conclusions resulting from the environmental assessment.

A. The ground-water monitoring program proposed by Ferret Exploration Company of Nebraska, Inc. is sufficient to monitor the operations and will provide a warning system that will minimize any impact on ground water. Furthermore, aquifer testing indicates that the production zone is adequately confined, thereby assuring hydrologic control of mining solutions.

B. Radiological effluents from the proposed operation of the well field and processing plant will be within regulatory limits and will be continuously monitored.

C. The environmental monitoring program is comprehensive and will detect any radiological releases resulting from the operation.

D. Radioactive wastes will be minimal and will be disposed of at an approved site in accordance with applicable Federal and State regulations.

E. Ground water, based upon previous testing, can be restored to baseline concentrations or applicable class of use standards.

In accordance with 10 CFR Part 51.33(a), the Director of the Uranium Recovery Field Office, made the determination to issue a draft finding of no significant impact and accept comments on the draft finding for a period of 30 days after issuance in the Federal Register.

This finding, together with the environmental assessment, setting forth the basis for the findings, is available for public inspection and copying at the Commission's Uranium Recovery Field Office at 730 Simms Street, Golden, Colorado and at the Commission's Public Document Room at 2120 L Street, Washington, DC.

Dated at Denver, Colorado, this 17th day of November, 1988.

For the Nuclear Regulatory Commission,

Edward F. Hawkins,  
Chief, Licensing Branch 1, Uranium Recovery Field Office, Region IV.

[FR Doc. 88-27680 Filed 11-30-88; 8:45 am]

BILLING CODE 7590-01-M

### Advisory Committee on Reactor Safeguards (ACRS) and Advisory Committee on Nuclear Waste (ACNW); Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the ACRS full Committee, and of the ACNW, the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published October 20, 1988 (53 FR 41259). Those meetings which are definitely scheduled have had, or will have, an individual notice in the Federal Register approximately 15 days (or more) prior to the meeting. It is expected that sessions of ACRS full Committee and ACNW meetings designated by an asterisk (\*) will be open in whole or in part to the public. ACRS full Committee and ACNW meetings begin at 8:30 a.m. and ACRS Subcommittee meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during ACRS full Committee and ACNW meetings and when ACRS Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the December 1988 ACRS full Committee meeting can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone: 301/492-7288, ATTN: Barbara Jo White) between 7:30 a.m. and 4:15 p.m., Eastern Time.

#### ACRS Subcommittee Meetings

**Containment Systems**, December 6, 1988, Bethesda, MD. The Subcommittee will review the NRC staff's document on final recommendations for containment performance and improvements (BWR Mark I only).

**Thermal Hydraulic Phenomena**, December 7, 1988, Bethesda, MD. The Subcommittee will review: (1) The report of the joint NRC/B&W Technical Advisory Group on the need for follow-on research concerning thermal hydraulic phenomena of the B&W once through steam generator (OTSG), and (2) the final report of the NRC-RES Technical Program Group on the Code Scaling, Applicability and Uncertainty (CSAU) Evaluation Methodology.

**Reliability Assurance**, December 12, 1988, Bethesda, MD. The Subcommittee will continue the discussion of the Equipment Qualification-Risk Scoping

Study with special emphasis on peer-review comments.

**Mechanical Components**, December 12, 1988, Bethesda, MD—CANCELLED.

**Advanced Reactor Designs**, December 13, 1988, Bethesda, MD. The Subcommittee will review the draft SER for the Sodium Advanced Fast Reactor (SAFR) design.

**Regional Programs**, January 5-6, 1989, Region IV Office, Arlington, TX. The Subcommittee will review the activities under the purview of the NRC Region IV Office.

**Improved Light Water Reactors**, January 10, 1989, Bethesda, MD. The Subcommittee will review: (1) the proposed final version of 10 CFR Part 52, Early Site Permits, Standard Design Certification, and Combined Licenses for Nuclear Power Reactors, and (2) the progress of the Requirements Document for the EPRI ALWR.

**Auxiliary and Secondary Systems**, January 11, 1989, Bethesda, MD. The Subcommittee will discuss Control Air System Design and Operating Experience, and the proposed resolution of Generic Issue 43, "Air Systems Reliability."

**Mechanical Components**, January 11, 1989, Bethesda, MD. The Subcommittee will discuss Air Operated Valve Testing and Operating Experience (including Solenoid Air Control Valves) and other related matters.

**Auxiliary and Secondary Systems**, January 27, 1989, Bethesda, MD. The Subcommittee will review the adequacy of the proposed staff's plans to implement the recommendations resulting from the Fire Risk Scoping Study.

**Mechanical Components**, January 27, 1989, Bethesda, MD. The Subcommittee will review Generic Issues 70, "PORV Reliability," and 94, "Low Temperature Over Pressure Protection," and other related matters.

**Babcock & Wilcox Reactor Plants**, February 1 and 2, 1989, Sacramento, CA. The Subcommittee will discuss the lessons learned from the approximately 2-year shutdown of Rancho Seco that occurred following the December 16, 1985, overcooling event. Topics include monitoring extended start-up program, as well as, plant and organization changes as a result of the restart effort.

**Safety Research Program**, February 8, 1989, Bethesda, MD. The Subcommittee will discuss the ongoing and proposed NRC Safety Research program and budget.

**Materials and Metallurgy**, February 15-16, 1989, Columbus, OH. The Subcommittee will review the degraded piping program, including NDE and

aging of centrifugally cast stainless steel piping material.

**Occupational and Environmental Protection Systems**, March 1-2, 1989, Bethesda, MD. The Subcommittee will discuss the general status of emergency planning for nuclear power plants.

**Advanced Pressurized Water Reactors**, Date to be determined (January), Bethesda, MD. The Subcommittee will discuss the licensing review bases document being developed for Combustion Engineering's Standard Safety Analysis Report-Design Certification (CESSAR-DC).

**Human Factors**, Date to be determined (January), Bethesda, MD. The Subcommittee will review the Human Research Factors program plan.

**Instrumentation and Control Systems**, Date to be determined (January/February), Bethesda, MD. The Subcommittee will review the proposed resolution of Generic Issue 101, "Break Plus Single Failure in BWR Water Level Instrumentation."

**Decay Heat Removal Systems**, Date to be determined (January/February), Bethesda, MD. The Subcommittee will review the proposed resolution of Generic Issue 23, "RCP Seal Failures."

**General Electric Reactor Plants (Peach Bottom Restart)**, Date to be determined (January/February), Bethesda, MD. The Subcommittee will review the proposed restart plan for the Peach Bottom Plant.

**Joint Core Performance/Thermal Hydraulic Phenomena**, Date to be determined (January/February), Bethesda, MD. The Subcommittee will review the implications of the core power oscillation event at LaSalle, Unit 2.

**Extreme External Phenomena**, Date to be determined (January/February), Bethesda, MD. The Subcommittee will review planning documents on external events.

**AC/DC Power Systems Reliability**, Date to be determined (February), Bethesda, MD. The Subcommittee will review the proposed resolution of Generic Issue 128, "Electrical Power Reliability."

**Materials and Metallurgy**, Date to be determined (February/March), Bethesda, MD. The Subcommittee will review low upper shelf fracture energy concerns of reactor pressure vessels.

**Materials and Metallurgy**, Date to be determined (April), Palo Alto, CA. The Subcommittee will discuss the status of the following matters: erosion/corrosion of pipes, hydrogen water chemistry, zinc addition to primary coolant loop and its effects on materials, decontamination

effects on materials and other related matters.

**Advanced Pressurized Water Reactors**, Date to be determined (April), Bethesda, MD. The Subcommittee will discuss the comparison of WAPWR (RESAR SP/90) design with other modern plants (in U.S. and abroad).

**Plant Operating Procedures**, Date to be determined (early spring), Bethesda, MD. The Subcommittee will review the status of the NRC Program on Technical Specifications update. Also, to review anonymous letter to Weiss, dated September 27, 1988, on Technical Specifications inadequacies.

**Decay Heat Removal Systems**, Date to be determined, Bethesda, MD. The Subcommittee will explore the issue of the use of feed and bleed for decay heat removal in PWRs.

**Thermal Hydraulic Phenomena**, Date to be determined, Bethesda, MD. The Subcommittee will discuss the status of Industry Best-Estimate ECCS Model submittals for use with the revised ECCS Rule.

**Auxiliary and Secondary Systems**, Date to be determined, Bethesda, MD. The Subcommittee will discuss the: (1) Criteria being used by utilities to design Chilled Water Systems, (2) regulatory requirements for Chilled Water Systems design, and (3) criteria being used by the NRC staff to review the Chilled Water Systems design.

#### ACRS Full Committee Meetings

December 15-17, 1988—Items are tentatively scheduled.

**\*A. Meeting with Director, NRC Office of Research (Open)**—Discuss topics of mutual interest, including the status of implementation of recommendations of the National Research Council on Revitalizing Nuclear Safety Research and on Human Factors Research.

**\*B. Quantitative Safety Goals (Open)**—Review and comment on proposed NRC Staff plan for implementation of NRC's Safety Goal Policy.

**\*C. Containment Systems (Open)**—Review and comment on the final recommendations for containment performance and improvements for BWR Mark I containment.

**\*D. Thermal-Hydraulic Phenomena (Open)**—Review NRC Code Scaling Applicability and Uncertainty (CSAU) Evaluation Methodology proposed for use with best-estimate ECCS evaluation models.

**\*E. Equipment Qualification-Risk Scoping Study (Open)**—Review and comment on the Equipment Qualification-Risk Scoping Study.

**\*F. LaSalle Power Oscillation Event (Open)**—Briefing regarding status of programs to address implications of the core power oscillation event which occurred recently at the LaSalle Nuclear Power Plant.

**\*G. Reactor Operator Requalification (Open)**—Briefing regarding lessons learned from revised operator qualification methodology.

**\*H. Sodium Advanced Fast Reactor (SAFR) (Open)**—Initial session to discuss the SAFR design.

**\*I. NRC Regulatory Philosophy (Open)**—Discuss issues related to the NRC Regulatory Philosophy that need to be examined.

**\*J. ACRS Subcommittee Activities (Open)**—Reports regarding status of assigned ACRS subcommittee activities, including thermal-hydraulic phenomena regarding status of joint NRC/B&W OTSG follow-on research program, and international conference on quality and quality assurance.

**\*K. Anticipated ACRS Activities (Open)**—Discuss anticipated ACRS subcommittee activities and topics proposed for consideration by the full Committee. Discuss ACRS/ACNW interface.

**L. Election of ACRS Officers (Closed)**—Discuss qualifications of members proposed as candidates for ACRS Officers for CY 1989.

**\*M. Meeting with Director, OPGA (Open/Closed)**—Report regarding visit to USSR Nuclear installations.

January 12-14, 1989—Agenda to be announced.

February 9-11, 1989—Agenda to be announced.

#### ACNW Full Committee Meetings

**5th Meeting**, January 23-24, 1989—Agenda to be announced.

**6th Meeting**, February 22-23, 1989—Agenda to be announced.

**7th Meeting**, March 22-23, 1989—Agenda to be announced.

Date: November 25, 1988.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 88-27681 Filed 11-30-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 030-13105 and 030-17570; License Nos. 37-17637-01 and 37-17637-02; EA 88-248]

#### E.L. Conwell & Co.; Order To Show Cause Why License Should Not Be Modified

I.

E.L. Conwell & Company (licensee), Bridgeport, Pennsylvania, is the holder of Byproduct Material Licenses Nos. 37-

17637-01 and 37-17637-02 issued by the Nuclear Regulatory Commission (the Commission or NRC). The licenses authorize the licensee, in part, to possess and use byproduct nuclear material in sealed sources (for use in nuclear gauges) to measure the properties of materials in accordance with the condition specified in the licenses. The licenses were most recently renewed on October 20, 1983 (License No. 37-17637-01) and February 5, 1987 (License No. 37-17637-02), and are due to expire on October 31, 1988, and January 31, 1992, respectively.

#### II.

On September 12-13, 1988, an announced radiation safety inspection of licensed activities was performed at the licensee's facility in Bridgeport, Pennsylvania, and at a temporary job location in Conshohocken, Pennsylvania. During the inspection at the field site on September 12, 1988, the NRC found that a Troxler nuclear density gauge, containing millicurie quantities of cesium-137 and americium-241, was being used at the field site, and the gauge, which was not secured, was not under constant surveillance and immediate control of a licensee employee as required. In addition, the NRC found that the source lock on the gauge was not in place (i.e., was not locked in the safe store position) when the gauge was not in use, and that the gauge was not accompanied by adequate shipping papers as required. Furthermore, when the inspector visited the same field site on the following day, he again found that the gauge was not locked in the safe store position when not in use, and again was not accompanied by the appropriate shipping papers as required. These failures constitute violations of NRC requirements.

#### III.

These violations raise significant regulatory concerns regarding the adequacy of management control of, and the degree of management attention to, NRC licensed activities, given the fact that (1) two of the three violations occurred within the same two day period, and (2) one of these two violations, involving a lack of adequate shipping papers, as well as the violation involving the failure to maintain constant surveillance or immediate control of unsecured gauges, had been identified during several previous NRC inspections. These previous inspections resulted in enforcement conferences being conducted with the licensee on November 19, 1985, and July 22, 1987,

and civil penalties of \$500 and \$1,000 being proposed for these violations on December 10, 1985, and August 18, 1987, respectively.

#### IV.

In addition to these violations, the NRC also found that in a letter dated September 9, 1988, from the licensee's General Manager to the NRC Region I, inaccurate information was provided to the NRC. The letter was sent to the NRC in response to a Notice of Violation issued on August 19, 1988, for two violations identified during an inspection in June 1988, including a violation involving the failure to include all of the required information on shipping papers. The letter stated that on September 7, 1988, the licensee had obtained and placed with each device a shipping document from the manufacturer which contained the transport index, chemical and physical form of radioactive material, and the category of label applied to the package. The statement was inaccurate in that an inspection of one of the devices on September 12 and 13, 1988, revealed that the shipping document described in the licensee's letter, dated September 9, 1988, was not with the device. This is a violation of 10 CFR 30.9.

#### V.

The licensee's continued failure to adhere to NRC requirements (as evidenced by the recurrence of previously identified violations), as well as the submittal of inaccurate information to the NRC, demonstrates that additional actions are needed, in addition to those currently imposed by the license, to increase and improve management attention to licensed activities so as to ensure that these activities are conducted safely and in accordance with NRC requirements. The NRC recognizes that the licensee, in a letter dated September 29, 1988, informed the NRC that subsequent to the enforcement conference, it (1) suspended use of the gauges until the provisions of the license have been reviewed with all certified technicians, and (2) established a disciplinary procedure for failure to comply with its prescribed procedures. Nonetheless, I have determined that the measures proposed by the licensee do not sufficiently address the underlying causes of the violations and that additional requirements are necessary to ensure that your licensed activities are conducted safely and in accordance with the terms of your license. Specifically, I have determined that the license should be modified to require that (1) the duties and responsibilities of

the Radiation Safety Officer be more clearly defined, (2) a training program be established for gauge users, (3) a program of field audits of nuclear gauge users be implemented, and (4) a defined disciplinary program be developed and implemented for those nuclear gauge users who fail to comply with license requirements, as steps to preclude recurrence of these violations.

#### VI.

Accordingly, in view of the foregoing, and pursuant to sections 81, 161b, 161i, 161o, and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 30, it is hereby ordered that the licensee shall:

A. Within 30 days of the date of this order, submit to the Regional Administrator, Region I, a description of how the designated Radiation Safety Officer (RSO) will implement his responsibilities to:

1. Ensure that radioactive materials are handled, and licensed activities are conducted, in accordance with the terms of the license and NRC requirements;

2. Provide appropriate training, and periodic retraining, to all individuals handling licensed materials or performing licensed activities, including training concerning appropriate NRC requirements and the conditions of the license;

3. Perform appropriate audits of licensed activities at both the permanent facilities and temporary field sites, at a minimum at intervals not to exceed three months, for each individual who used a nuclear gauge during any of those three months, to verify that all personnel are adhering to the conditions of the license; and

4. Advise all employees of the disciplinary policy that will be utilized for individuals who do not adhere to the conditions of the license.

B. Within 30 days of the date of this Order, submit to the Regional Administrator, Region I,

1. A detailed description of the specific training to be provided to all employees, and specific checklist(s) that the RSO will use in performing the quarterly audits;

2. A description of the disciplinary program that the licensee intends to follow to ensure that individuals are held accountable whenever NRC requirements are violated, and verification that the terms of the disciplinary program have been communicated to all licensee employees.

C. Maintain records of all training, retraining, and audits, for at least three years.

The Regional Administrator, Region I, may, in writing, relax, rescind, or terminate any of the above provision upon good cause shown.

#### VII.

The licensee may show cause why this Order should not have been issued and should be vacated by filing a written answer under oath or affirmation within 30 days of the date of this Order which sets forth the matters of fact and law on which the licensee relies. The licensee may answer as provided in 10 CFR 2.202(d) by consenting to this Order. If the licensee fails to answer within the specified time or consents to this Order, this Order shall be final without further Order.

#### VIII.

The licensee, or any other person adversely affected by this Order, may request a hearing within 30 days after issuance of this Order. Any answer to this Order or any request for hearing shall be submitted to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies shall also be sent to the Assistant General Counsel for Enforcement at the same address and to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which the petitioner's interest is adversely affected by the Order and should address the criteria set forth in 10 CFR 2.714(d). Upon the failure of the licensee, or any other person adversely affected by this Order to answer or request a hearing within the specified time, this Order shall be final without further proceedings.

If a hearing is requested by the licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such a hearing shall be whether this Order should be sustained.

For the Nuclear Regulatory Commission,  
James M. Taylor,  
*Deputy Executive Director for Regional Operations.*

Dated at Rockville, Maryland this 18th day of November 1988.

[FR Doc. 88-27682 Filed 11-30-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-302; License No. DPR-72; EA 87-216]

**Florida Power Corp., Crystal River Unit 3; Order Imposing Civil Monetary Penalty**

**I.**

Florida Power Corporation, Crystal River, Florida (licensee) is the holder of Operating License No. DPR-72 (license) issued by the Nuclear Regulatory Commission (Commission or NRC) on January 28, 1977. The license authorizes the licensee to operate the Crystal River facility in accordance with the conditions specified therein.

**II.**

NRC inspections of the licensee's activities under the license were conducted on October 14-16, 1987 and January 5-7, 1988. The results of these inspections indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (NOV) was served upon the licensee by letter dated March 17, 1988. The NOV stated the nature of the violations, the provisions of the NRC's requirements that the licensee had violated, and the amount of the civil penalty proposed for the violations. The licensee responded to the NOV by letter dated May 16, 1988. In its response, the licensee admitted certain violations, denied other violations, and stated that the Enforcement Policy had been inappropriately applied in this case and that the facts of the matter support full remission of the civil penalty.

**III.**

After consideration of the licensee's response and the statements of fact, explanations, and argument for mitigation contained therein, the Deputy Executive Director for Regional Operations has determined, as set forth in the Appendix to this Order, that the violations, except for Violation I.C.4, occurred as stated and, for reasons set forth in the attached Appendix, the penalty proposed for the violations described in the Notice of Violation and Proposed Imposition of Civil Penalty should be mitigated by 50 percent and imposed.

**IV.**

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2282, Pub. L. 96-295 and 10 CFR 2.205, it is hereby ordered that:

The licensee pay a civil penalty in the amount of Fifty Thousand Dollars

(\$50,000) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing shall be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with a copy to the Regional Administrator, Region II, 101 Marietta Street, NW., Atlanta, Georgia 30323.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions to this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be whether the licensee committed the violations that are denied and whether the proposed civil penalty mitigated by 50 percent should be imposed.

For the Nuclear Regulatory Commission,  
James M. Taylor,  
Deputy Executive Director for Operations.

Dated at Rockville, Maryland this 17th day of November 1988.

**Appendix—Evaluation and Conclusion**

**Introduction**

On October 14-16, 1987 and January 5-7, 1988, inspections were conducted at the Crystal River facility. Violations identified during these inspections led to the issuance of a Notice of Violation and Proposed Imposition of Civil Penalty on March 17, 1988. Florida Power Corporation, in their response, admitted violations I.A.1 and 2, I.C.3 and 5, II.A and B; denied violations I.B., I.C.1, 2 and 4 and requested mitigation of the civil penalty. Provided below are: (1) a restatement of each violation denied, (2) a summary of the licensee's response regarding each denied violation, (3) NRC's evaluation of the licensee's response, (4) the licensee's request in support of withdrawal of the proposed civil penalty, and (5) NRC's conclusions regarding the violations and the proposed civil penalty.

**I. Violation I.B**

**Restatement of Violation**

10 CFR 19.12 requires that all individuals working in or frequenting any portion of a restricted area shall be instructed in the purpose and functions of protective devices employed, shall be instructed of their responsibility to report promptly to the licensee any condition which may lead to or cause a violation of Commission regulations and licenses or unnecessary exposure to radiation or to radioactive material, and shall be instructed in the appropriate response to warnings made in the event of any unusual occurrence or malfunction that may involve exposure to radiation or radioactive material. The extent of these instructions shall be commensurate with potential radiation health protection problems in the restricted area.

Contrary to the above, the licensee failed to adequately provide instruction to an Auxiliary Nuclear Operator working in the restricted area of the Reactor Building on October 9, 1987, on the limitations and possible failure modes of a radiation survey instrument that had been provided for his use in controlling his exposure in the restricted area and on the appropriate response to take when the radiation level present exceeded the maximum scale reading on the radiation survey meter.

**Summary of Licensee's Response**

Florida Power Corporation denies the violation and believes it should be withdrawn. The ANO received training on radiation detection instruments during the Radiation Protection lesson provided in the Assistant Nuclear Auxiliary Operator course and the Auxiliary Nuclear Operator courses for non-licensed operators. This training included information on radiation detection principles, ionization chambers, proportional counters, and Geiger-Mueller (GM) tubes. The radiation detection instrument utilized by the ANO did not respond incorrectly or fail, it indicated an off-scale reading in response to the high radiation field to which it was exposed. Based on the individual's training and extensive work experience history including nuclear navy experience, non-licensed operator training, General Employee Training, and his Crystal River Unit 3 (CR-3) work experience, it is reasonable to assume he knew the correct response to an off-scale radiation detection instrument. It is also clear from the ANO's actions (i.e., pattern of brick removal, dosimetry positioning, warning of others, etc.) that additional training was unnecessary.

The ANO failed to take the proper actions not out of lack of training but due to his decision to perform work that exceeded the authorized scope of approved activities.

Florida Power Corporation subsequently provided specific supplemental retraining to the ANO on the use and limitations of survey instruments. Radiation Safety Procedures have also been enhanced with respect to response to off-scale readings, and General Employee Training has been enhanced to include failure modes of survey instruments. These actions by Florida Power Corporation represent positive actions to improve the training and instruction already provided to radiation workers. The NOV could be read to assume that adoption of these additional measures is an indication that previous practices were insufficient to meet regulatory requirements. Such a view is contrary to the Enforcement Policy in that it could discourage improvements out of fear that the NRC will construe such improvements as an admission of past violations.

#### NRC Evaluation

The inspection revealed that the ANO was trained in certain subjects related to survey instruments but, was not trained on the limitations and possible failure modes of radiation survey instruments and the correct response to take to off-scale readings. The inspector reviewed the lesson plans with licensee representatives and verified that these subjects were not addressed. The licensee's subsequent statement that these topics were added to the training program also incites they were not there when reviewed by the inspector. The staff cannot agree with the licensee's statement that it is reasonable to assume the individual knew the correct response to an off-scale instrument since the individual was confronted with that very situation and did not respond appropriately. Supporting this position is the fact that the second ANO also failed to respond to an off-scale survey instrument, indicating there most likely was a deficiency in their training in this area. The ANOs stated in interviews with the inspector that they had not received training on the correct response to take when off-scale instrument readings are observed. The NRC decision to cite this violation was based on a review of the facts and was not, as claimed by the licensee, based on construing their corrective actions as an admission of a violation. This violation was first presented in the October 16, 1987 exit interview as documented in the

inspection report which occurred prior to the corrective actions described by the licensee. The licensee's corrective actions appear appropriate and in no way were used as a basis for identifying this circumstance as a violation.

#### NRC Conclusion

For the above reason, the NRC staff concludes that the violation occurred as stated.

#### II. Violation I.C.

##### Restatement of Violation

Technical Specification 6.11 requires that procedures for personnel radiation protection shall be prepared consistent with the requirements of 10 CFR Part 20 and shall be approved, maintained, and adhered to for all operations involving personnel radiation exposure.

Technical Specification 6.8.1.b requires that written procedures shall be established, implemented, and maintained covering refueling operations.

Contrary to the above, the licensee's procedures for personnel radiation protection and refueling operations were inadequate as evidenced by the October 8, 1987 reactor cavity access shielding removal event in that they did not specify that:

1. Permanent shielding removed during outage activities is to be reinstalled properly;
2. Health physics is to be notified prior to the removal of permanent shielding;
3. Health physics is to be notified when unexpected radiological conditions are encountered or scope of previously authorized work changed;
4. High radiation areas in the Reactor Building area are to be posted and controlled following a plant shutdown and prior allowing general access; and
5. Personnel assigned to observe for seal leakage in the Reactor Building while filling the fuel transfer canal are to be instructed in the procedure for observing leaks and the precautions to be observed while performing that task, particularly with regard to entries into the reactor cavity.

##### Summary of Licensee's Response

Florida Power Corporation admits the violation based on examples 3 and 5 but denies the violation with respect to examples 1, 2, and 4.

##### A. Licensee's Comment On Violation I.C.1

The original function of the lead bricks placed at the reactor cavity access was twofold. First to function as shielding and second as a barrier to

prevent inadvertent access to the cavity area. Since FPC admits Violation I.A.1 which states the barrier was inadequate to meet the locked gate criteria, the shielding qualities of the barrier is the issue here. FPC contends that work instructions are adequate to control the removal and reinstallation of shielding.

The lead bricks were installed properly at the end of CR-3's 1985 refueling outage as can be shown by the reduction of radiation levels on radiation surveys taken in the reactor cavity area following the installation of the lead bricks. Shielding installation instructions are routinely included on Radiation Work Permits in the "Remarks and Special Instructions" section. A review of RWP's 85-550 and 85-551 which covered installation and removal of shielding for the 1985 refuel outage provided the following instructions:

- (a) HP to direct placement of shielding.
- (b) HP to be present at the start of each job.

These RWPs show that it is standard practice at CR-3 for Health Physics to oversee evolutions involving shielding.

FPC concludes that the lead bricks at the reactor cavity access were installed properly after the 1985 refuel outage inasmuch as they provided adequate shielding prior to their unauthorized removal. Therefore, adequate guidance was provided for the control of shielding.

#### NRC Evaluation

At the time the shield wall was replaced in 1985, the licensee intended the shield wall to function as the physical barrier to access the cavity area. The wall also served a radiation shielding function. The craft group reinstalled the shield wall without any written specifications and the adequacy of their work, either as a barrier or as shielding, was not formally reviewed upon completion. The instructions provided on RWP's 85-550 and 85-551 were also inadequate in that they failed to provide specifications for reinstallation of this shielding (e.g., shims were to be added such that the bricks could not be easily removed) and they did not call for HP to be present at the completion of the shielding installation to ensure that the shield had been properly installed. Thus, the licensee did not have adequate procedures in place to ensure that the shielding was properly reinstalled.

#### B. Licensee's Comment On Violation I.C.2

All radiation workers at CR-3 are required to comply with Radiation Safety Procedures (RSPs). General Employee Training also specifies to never remove temporary shielding without Health Physics approval. The procedure RSP-101, "Basic Radiological Safety Information and Instructions for Radiation Workers," revision 8, was in effect at the time of the incident and states in section 3.1.3, "Rules within the RCA," step 3.1.3.7, "notify Health Physics personnel and obtain appropriate approvals prior to breaching any container, containment, system and/or component integrity." Section 2.3.5 defines containment(s)/container(s) as "any device (e.g., bag, box, drum, tent, glove box, etc.) used to control the release of radioactive material or radiation." The lead bricks served as a containment device and a radiological control device in regard to the high radiation area that existed in the cavity area. The ANO proceeded to remove the shielding contrary to radiation protection program instructions and procedural requirements in an effort to discover leakage from the seal plate. If the ANO had followed RSP-101, he would have contacted Health Physics prior to removing the shielding as required.

#### NRC Evaluation

The inspector determined that the licensee's procedures did contain guidance on notifying health physics before removing temporary shielding but did not address comparable controls for permanent shielding. The licensee's position that shielding is considered a "containment device" and is therefore covered by their procedure goes beyond what one would reasonably expect a radiation worker to consider a containment. It should be noted that at the time of the inspection the licensee did not offer the explanation that they considered their shielding as containment. Assuming procedure RSP-101 was intended to address shielding, its guidance was inadequate to convey its intent.

#### C. Licensee's Comment On Violation I.C.4

In order for the Reactor Building to be accessed, RWP's must be issued. For an RWP to be issued, surveys must be performed in the designated work areas. When high radiation areas are identified during these surveys, they must be posted and controlled. Therefore, following a plant shutdown, surveys must be performed and high radiation

areas posted and controlled prior to allowing general access to the Reactor Building. These actions are covered in HPP-108, "Radiation Work Permit Procedure," and HPP-202, "Scheduled Radiological Surveys and Controls." Therefore procedures are adequate to assure the Reactor Building is posted and controlled following a plant shutdown and prior to allowing general access.

#### NRC Evaluation

This violation is withdrawn.

#### III. Licensee's Request for Withdrawal of the Civil Penalty

##### Summary of Licensee's Position

Florida Power Corporation believes that the violations were the result of actions by individuals beyond the authorized scope and are not indicative of programmatic weakness in the radiation protection program. The NOV and the associated civil penalty could be read to imply that the adoption of improvements in response to the events in question is an indication of deficiencies in the program. Such a view is fundamentally unfair and is contrary to the Enforcement Policy in that it may tend to discourage voluntary improvements by licensees. The licensee urges caution is using the term "reactor cavity access" since this event differed significantly from this class of events in the industry's experience since access, per se, was never attempted.

The licensee reviewed the applicability of the mitigation factors in the NRC Enforcement Policy. The licensee promptly identified the problem and voluntarily reported the event to the NRC telephonically and with an LER. Immediate and followup corrective actions were extensive.

The licensee discussed the factors for escalation of the civil penalty stated in the March 17, 1988 letter transmitting the NOV. The licensee acknowledges that there had been an outstanding work order since 1985 to provide a lockable barrier for the cavity access, but priority on completing it was based on the presumed adequacy of the lead bricks as a barrier. Personnel who observed the ANO had reason to believe that he was authorized to remove the lead bricks, there was no reason for them to report any apparent improper radiological activities and none of the personnel had authority to stop the work.

In regard to the events described in the second violation, they were committed by the same individual, who was eventually terminated. The fact that the individual was allowed to remain in

the high radiation area was reasonable considering the dose rates in the area.

In regard to the four prior notifications of similar events, the licensee stated that workers were made aware of the hazard and the shield wall barrier was evaluated for adequacy. No action taken by management can prevent individual actions which are outside the bounds of preestablished programs.

#### NRC Evaluation

The NRC Enforcement Policy states that licensee's are generally held responsible for the acts of their employees. The staff believes that the root cause of this problem was a lack of management controls in this area as evidenced by inadequate training and supervision as detailed in the NOV and not merely employee misconduct. The NRC's characterization of violations and severity levels was based on a review of the facts as determined by the onsite inspections and the licensee's presentation at the Enforcement Conferences. The NRC did not view the corrective actions as admissions of any problem not otherwise fully supported and indicated by the facts at hand. The NRC Enforcement Policy recognizes the importance of licensee initiative in identifying and correcting problems. The staff does not agree that this event was significantly different from other industry events of this type. A common element of each uncontrolled access to the cavity area involved potential or actual entry by personnel while searching for leaks. The ANO did not actually enter the cavity in this case, but could have had he removed additional shielding bricks. It is fundamental that individuals be knowledgeable of the potential hazards in the reactor cavity. The admission of Violation I.C.5 is in itself of significance.

Based upon the licensee's response regarding mitigation and escalation of the civil penalty, the NRC has reconsidered the amount of the civil penalty. The NRC recognizes that the licensee reported these events, even though they were not required to be reported, and has taken extensive corrective action. However, the NRC maintains that the licensee's Radiation Safety Program was deficient regarding the events because of: (1) The prior notice of similar reactor cavity events; (2) the fact that a work order to install a strongback on the existing lead brick barricade with an appropriate locking device was outstanding since 1985, and if completed would have prevented the occurrence of the reactor cavity access event; (3) the fact that there were several opportunities to discover the

reactor cavity access problem in that several members of the licensee's staff passed through the vicinity but did not recognize or report the problem; and (4) the fact that the violations involving unauthorized entries are similar to violations occurring in 1986. The NRC has also reevaluated this case with other similar cases including the two cases the licensee noted in its response (EA 84-13 involving Carolina Power and Light Company and EA 86-38 involving Florida Power and Light Company). These cases are not controlling since different circumstances were involved in each case. Even if similar circumstances were involved, it is not clear that the results in the two cases noted by the licensee are justified under the present Enforcement Policy in view of the significance of the violations. However, after reconsidering your reporting of these events and your extensive corrective actions against your past performance and prior notice of similar events, the NRC is mitigating the civil penalty to \$50,000.

#### IV. NRC Conclusion

The NRC has reviewed Florida Power Corporation's response to the proposed imposition of civil penalty and arguments for withdrawal of the civil penalty. The NRC concludes that the violations, except for Violation I.C.4, occurred as stated in the proposed imposition of civil penalty and that an adequate basis for mitigation of the civil penalty has been provided by the licensee. Consequently, a proposed civil penalty in the amount of \$50,000 should be imposed.

[FR Doc. 88-27683 Filed 11-30-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-344]

#### Portland General Electrical Co.; Withdrawal of a Portion of an Application for Amendment to Facility Operating License No. NPF-1

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Portland General Electric Company (the Licensee) to withdraw its August 16, 1985 application as supplemented December 19, 1986, to amend the Trojan Nuclear Plant Technical Specifications (TS). The proposed amendment would have revised the Technical Specifications to allow relief from Limiting Condition of Operation 3.0.4 for several specifications. The Commission issued a Notice of Consideration of Issuance of Amendment in the Federal Register on February 10, 1988 (53 FR 3958). By letter

dated April 20, 1988 the licensee stated that a portion of the above application for amendment, TS 3.3.3.5, "Remote Shutdown Instrumentation," was withdrawn. The other items in the application for amendment were approved in Amendment No. 142, dated May 11, 1988.

For further details with respect to this action, see (1) the application for amendment dated August 16, 1985, as supplemented December 19, 1986, and (2) the licensee's letter of April 20, 1988 requesting withdrawal of the application. Both of the above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Portland State University Library, 731 SW Harrison Street, Portland, Oregon 97207.

Dated at Rockville, Maryland, this 16th day of October, 1988.

Roby Bevan,

*Project Manager, Project Directorate V,  
Division of Reactor Projects—III, IV, V and  
Special Projects.*

[FR Doc. 88-27684 Filed 11-30-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-461A]

#### Clinton Power Station; Proposed License Amendment; Merger of Licensees Soyland Power Cooperative, Inc., and Western Illinois Power Cooperative, Inc.; Request for Comments on Antitrust Issues

By application dated November 2, 1988, Illinois Power Company (IP) requested that Operating License NPF-62 for the Clinton Power Station (CPS) be amended to reflect a change in ownership interest in CPS. The change in ownership interest would result from the proposed merger of Soyland Power Cooperative, Inc. (Soyland) and Western Illinois Power Cooperative, Inc. (WIPCO), the two minority owners of CPS. The surviving entity resulting from the merger will be called Soyland Power Cooperative, Inc. and will own slightly less than 15% of CPS—an ownership share identical to the combined interests of Soyland and WIPCO.

IP, WIPCO and Soyland are currently the only licensees for CPS. The merger of WIPCO and Soyland will not result in the transfer of any interest in the license to an entity not currently a CPS licensee. Soyland will assume full responsibility for all CPS obligations currently being discharged by WIPCO. The proposed license amendment will not change IP's ownership share of CPS, nor will it change IP's commitments related to capital and operating and maintenance

costs, and it will not affect IP's role as project manager for CPS.

Pursuant to 10 CFR 50.90 of the Commission's Rules and Regulations and section 105c of the Atomic Energy Act, as amended, the staff is publishing notice of receipt of the proposed amendment and requesting comments on its competitive impact. A copy of the application for amendment has been forwarded to the Attorney General for his review and comment. Moreover, a copy of the application for amendment will be available for public inspection in the local public document room at the Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727 and at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC 20555.

Any person who wishes to express views pursuant to antitrust issues that may be raised by this amendment request, should submit said views within 15 days from the initial publication of this notice in the Federal Register to the U.S. Nuclear Regulatory Commission, Washington, DC 20555; Attention: Chief, Policy Development and Technical Support Branch, Office of Nuclear Reactor Regulation.

Dated at Rockville, Maryland, this 22nd day of November, 1988.

For The Nuclear Regulatory Commission:

Daniel R. Muller;

*Director, Project Directorate III-2; Office of  
Nuclear Reactor Regulation.*

[FR Doc. 88-27692 Filed 11-30-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-346; License No. NPF-3; EA 88-234]

#### Toledo Edison Co., Davis-Besse Nuclear Power Station; Order Modifying License

##### I.

The Toledo Edison Company (Licensee) is the holder of Operating License No. NPF-3 issued by the Nuclear Regulatory Commission (NRC/Commission) on April 22, 1977. The license authorizes the Licensee to operate the Davis-Besse Nuclear Power Station (Davis-Besse) in accordance with the conditions specified therein.

##### II.

A special NRC safety inspection (Inspection Report No. 50-346/88027(DRP)) conducted during the period from May 4 through September 2, 1988, and an NRC investigation (Investigation No. 3-88-008) confirmed an allegation regarding the discriminatory layoff by the former Quality Control (QC)

Manager at Davis-Besse, Louis R. Wade, of a contract QC Inspector who had raised safety concerns to licensee senior management. Specifically, the NRC concluded that the termination of the QC Inspector was a discriminatory act in violation of 10 CFR 50.7 and is described in a Notice of Violation and Proposed Imposition of Civil Penalty being issued this date. The details of the 10 CFR 50.7 violation are as follows.

On July 10, 1986, a Potential Condition Adverse to Quality Report (PCAQR) was written by a QC Inspector concerning deficiencies in the installation of an electrical wire splice. Mr. Wade (who at the time was a QA engineer) was instrumental in having the PCAQR improperly invalidated instead of processing it in accordance with station procedures which require that PCAQRs be processed through the Shift Supervisor, the Plant Technical Support Department and the PCAQR Review Board. (Mr. Wade was promoted shortly thereafter to QC Supervisor and then to QC Manager in 1987.) Because the QC Inspector was still concerned about the issue and refused to dismiss it, Mr. Wade requested that he formally document and clarify his concerns. The QC Inspector reiterated his safety concerns and the improper way his concerns were handled in a memorandum dated October 10, 1986, and provided copies to the Quality Assurance (QA) Director and the Senior Vice-President, Nuclear. As a result of the QC Inspector's memorandum, the QA Director (Mr. Wade's supervisor) investigated the matter and subsequently after several discussions with Mr. Wade, issued a memorandum dated October 29, 1986, to Mr. Wade reprimanding him for his improper handling of the QC Inspector's safety concerns.

During the period between late September and early October 1986, in preparation for an upcoming reduction in contract QC Inspector workforce due to the end-of-outage reduction in workload, Mr. Wade requested that the lead QC inspectors provide him with a list indicating the layoff sequence for contract QC inspectors. This QC Inspector's lead considered the QC Inspector to be one of approximately four or five inspectors who were good performers with multidisciplinary inspection skills who should not be laid off if possible. There is no question that the QC organization thought highly of the QC Inspector who was considered a competent and respected inspector. Despite the recommendation to retain

the QC Inspector if possible, Mr. Wade directed that the QC Inspector be laid off. Therefore, on October 31, 1986, the QC Inspector was laid off. In addition, the QC Inspector was one of the first contract QC Inspectors to be laid off and he was the first QC Inspector to be laid off from his particular QC section. Moreover, within 15 days, the vacancy in that section created by his employment termination was filled by another contract QC Inspector.

At the enforcement conference on September 26, 1988, the licensee informed the staff that it had removed Mr. Wade's site access on September 23, 1988, and that it had terminated Mr. Wade's employment effective November 1988.

### III.

In addition to the discrimination issue addressed in section II above, additional concerns have been identified relative to the performance of Mr. Wade. A second special NRC safety inspection (Inspection Report No. 50-346/88012 (DRP)) confirmed other allegations of activities conducted by or under the direction of Mr. Wade. A Notice of Violation concerning several violations identified during this inspection was issued on September 22, 1988.

### IV.

Based on the results of the NRC inspection and investigation, the staff has concluded that Mr. Wade intentionally removed the QC Inspector from the Davis-Besse facility for raising a safety issue. For almost two years, until disclosure by the NRC, the effect of this act had the potential to "chill" the proper actions of others. The conduct of Mr. Wade removing the QC Inspector who was properly raising safety issues cannot be tolerated. The public health and safety requires an effective quality assurance program in order to provide assurance that licensed activities are properly conducted. Moreover, a basic tenet of the Commission's quality assurance requirements, is that quality control workers must be free to be able to raise safety concerns without fear of retaliation.

The actions of Mr. Wade as described in sections II and III above, demonstrate that he cannot be relied upon to assure that quality assurance programs are properly conducted and that quality control workers will be permitted and encouraged to raise safety issues. Therefore, I have determined that I no longer have reasonable assurance that licensed activities conducted by or under the supervision of Mr. Wade will

be conducted in accordance with NRC requirements. Accordingly, I have concluded that it is necessary for the NRC to be informed if Mr. Wade is rehired to permit the NRC to determine, at that time, whether further regulatory action is required.

### V.

Accordingly, pursuant to sections 103, 161 b, 8, and c, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR Part 50, it is hereby ordered that:

License No. NPF-3 is amended adding the following conditions:

The Licensee shall provide the NRC Regional Administrator, RIII, written notice within one week of Mr. Louis R. Wade's reinvolved in safety-related activities authorized under License No. NPF-3. The notice shall include a statement from the Licensee as to its basis for concluding that, in light of Mr. Wade's conduct which resulted in his removal, he will properly carry out licensed activities.

The Regional Administrator, Region III, may relax or terminate this condition for good cause shown.

### VII.

The Licensee, Mr. Wade, or any other person adversely affected by this Order may request a hearing within 30 days after issuance of this Order. Any answer to this Order or any request for hearing shall be submitted to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies shall also be sent to the Assistant General Counsel for Enforcement at the same address and to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region III, 799 Roosevelt Road, Glen Ellyn, Illinois 60137. If a person other than the Licensee requests a hearing, that person shall set forth with particularly the manner in which the petitioner's interest is adversely affected by the Order and should address the criteria set forth in 10 CFR 2.714(d). Upon the failure of the Licensee, Mr. Wade, or any other person adversely affected by this Order to request a hearing within the specified time, this Order shall be final without further proceedings.

If a hearing is requested, the Commission will issue an order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

For the Nuclear Regulatory Commission.  
**James M. Taylor,**  
*Deputy Executive Director for Regional Operations.*

Dated at Rockville, Maryland this 21st day of November 1988.

[FR Doc. 88-27685 Filed 11-30-88; 8:45 am]

BILLING CODE 7590-01-M

## SECURITIES AND EXCHANGE COMMISSION

### Agency Information Collection Activities Under OMB Review

Agency Clearance Officer—Kenneth Fogash, (202) 272-2141.

Upon written request, copy available from: Securities and Exchange Commission, Office of Consumer Affairs and Information Services, Washington, DC 20549.

#### Extension

*Proposed Extension of Regulation S-X (17 CFR 210)*

SEC File No. 270-3

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted regulation S-X (17 CFR 210) for approval of an extension of clearance.

Information collected and records prepared pursuant to Regulation S-X focus on the form and contents of, and requirements for, financial statements filed with periodic reports and in connection with the offer or sale of securities.

The potential respondents include all entities that file registration statements or reports pursuant to the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, or the Investment Company Act of 1940.

Regulation S-X specifies the form and content of financial statements when those financial statements are required to be filed by other rules and forms under the Federal securities laws. Compliance burdens associated with the financial statements are assigned to the rule or form that directly requires the financial statements to be filed, not Regulation S-X. Instead, an estimated burden of one hour traditionally has been assigned to Regulation S-X for incidental reading of the regulation. The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules or forms. Direct any

comments concerning the accuracy of estimated average burdens hours for compliance to Kenneth A. Fogash, Deputy Executive Director, 450 Fifth Street NW., Washington, DC 20549-6004 and to Gary Waxman at the address listed below.

Submit comments to OMB Desk Officer: Gary Waxman (202) 395-7450, Office of Management and Budget, Paperwork Reduction Project 3435-0009, Office of Information and Regulatory Affairs, Room 3228 NEOB, Washington, DC 20503.

Jonathan G. Katz,  
*Secretary.*

November 22, 1988.

[FR Doc. 88-27666 Filed 11-30-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16654; 812-7116]

### Boston Financial Qualified Housing Tax Credits L.P. III and Arch Street III, Inc.; Application

November 25, 1988.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

**Applicants:** Boston Financial Qualified Housing Tax Credits L.P. III, a Delaware limited partnership, (the "Partnership") and its managing general partner, Arch Street III, Inc., a Massachusetts corporation ("Managing General Partner").

**Relevant 1940 Act Sections:** Exemption under section 6(c) from all provisions of the 1940 Act.

**Summary of Application:** Applicants seek an order exempting the Partnership from all provisions of the 1940 Act and the rules thereunder to permit the Partnership to invest in other limited partnerships that in turn will engage in the development, rehabilitation, ownership and operation of low and moderate income housing projects.

**Filing Date:** The application was filed on September 8, 1988 and amended on November 10, 1988.

**Hearing or Notification of Hearing:** If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on December 19, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to

the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, 101 Arch Street, Boston, Massachusetts 02110.

**FOR FURTHER INFORMATION CONTACT:** Victor R. Siclari, Staff Attorney, at (202) 272-3028 or Stephanie M. Monaco, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

#### Applicants' Representations

1. The Partnership was formed on August 9, 1988, as a vehicle for equity investment in apartment complexes to be qualified, in the opinion of counsel, for the low income housing tax credit (the "Low Income Housing Credits") under the Internal Revenue Code of 1986, as amended ("Code"). An unlimited amount of the aggregate capital contributions of the limited partners ("Limited Partners") of the Partnership may be invested in nonsubsidized apartment complexes that will be qualified for the Low Income Housing Credits, although the Partnership expects to invest a majority of its net proceeds in subsidized apartment complexes.

2. The Partnership will operate as a "two-tier" entity, i.e., the Partnership, as a limited partner, will invest in other limited partnerships ("Local Limited Partnerships") which, in turn, will engage in the development, rehabilitation, ownership and operation of apartment complexes in accordance with the purpose and criteria set forth in Investment Company Act Release No. 8456 (August 9, 1974) ("Release No. 8456"). The Partnership's investment objectives are: (i) To provide current tax benefits in the form of tax credits which Qualified Investors (defined herein) may use to offset their federal income tax liability; (ii) to preserve and protect the Partnership's capital; (iii) to provide limited cash distributions which are not expected to constitute taxable income during Partnership operations; and (iv) to provide cash distributions from sale or refinancing transactions, as defined in the Partnership's partnership

agreement (the "Partnership Agreement").

3. The Partnership will normally acquire at least a 90% interest in the cash distributions, profits, losses and tax credits of the Local Limited Partnerships, with the balance remaining with the local general partners. However, in certain cases, at the discretion of the Managing General Partner, the Partnership may acquire a lesser interest in a Local Limited Partnership. Should Partnership invest in any Local Limited Partnership in which it acquires less than 50% of the limited partnership interest, the Partnership Agreement will provide that the Partnership will have at least a 50% vote to: Amend such partnership agreement of such Local Limited Partnership; dissolve such Local Limited Partnership; remove the local general partner and elect a replacement; and approve or disapprove the sale of substantially all of the assets of such Local Limited Partnership. In addition, in connection with the qualification of the sale of the units of Limited Partnership interests in the Partnership and the compensation arrangements discussed below, the Partnership has entered into an undertaking with certain state securities authorities indicating that the Local Limited Partnership agreements will provide to the limited partners of the Local Limited Partnership substantially all of the rights required by Section VII of the guidelines adopted by the North American Securities Administrators Association, Inc. ("NASAA").

4. On September 6, 1988, the Partnership filed a registration statement (as amended on November 15, 1988) under the Securities Act of 1933 (the "Securities Act") for the sale of up to 100,000 units of Limited Partnership interest ("Units") at \$1,000 per Unit with a minimum subscription of five units (\$5,000) per investor.

5. Subscriptions for Units must be approved by the Managing General Partner, and such approval will be made conditional upon representations as to suitability of the investment for each subscriber. The form of subscription agreement for Units, set forth as Exhibit B to the Prospectus, provides that each subscriber will represent, among other things, that he meets the general investor suitability standards established by the Partnership and set forth in the Prospectus under the heading "Who Should Invest." Such general investor suitability standards provide, among other things, that investment in the Partnership is suitable only for an investor (a "Qualified

Investor") who meets the following requirements: (a) In the case of an investor that is a corporation, other than a corporation subject to Subchapter S of the Code, such corporation (a "C Corporation") has a net worth of not less than \$75,000; (b) in the case of a noncorporate investor, such investor reasonably expects to have substantial, unsheltered passive income or, if an individual, such investor reasonably expects to have adjusted gross income of less than \$250,000 in the next twelve years and reasonably expects to have income tax liability during those years in respect of which the tax credits can be utilized and either (1) he has a net worth (exclusive of home, furnishings and automobiles) of at least \$50,000 (\$35,000, if such investor is a resident of New Hampshire) and an annual gross income of not less than \$30,000 (\$35,000, if such investor is a resident of New Hampshire) in the current year and estimates he will maintain these levels for the twelve succeeding years and that (without regard to investment in the Partnership) some part of his income for the current year and the twelve succeeding years will be subject to Federal income tax at the rate of 28% or more, or (2) irrespective of annual taxable income, he has a net worth (exclusive of home, furnishings and automobiles) of at least \$75,000, or (3) is purchasing in a fiduciary capacity for a person or entity having such net worth and annual gross income as set forth in clause (1) or such net worth as set forth in clause (2); or (c) in the case of an investor that is a corporation subject to Subchapter S of the Code each of its shareholders (or if a partnership each of its partners) holding a material interest therein meets the criteria applicable to non-corporate investors. Units will be sold in certain states only to persons who meet additional or alternative standards which will be set forth in the Prospectus, any supplement to the Prospectus or the Subscription Agreement; *provided, however*, that in no event shall the Partnership employ any such suitability standard which is less restrictive than that set forth above. The Partnership Agreement also imposes certain restrictions on transfer and assignment of the Units. The Partnership will not redeem or repurchase Units, does not anticipate formation of a public market for the Units, and thus believes purchases of Units should be considered illiquid investments.

6. The Partnership will be controlled by the Managing General Partner and Arch Street III Limited Partnership, its general partners (the "General

Partners"). The Limited Partners, consistent with their limited liability status, will not be entitled to participate in the control of the business of the Partnership. However, the majority in interest of the Limited Partners will have the right to amend the Partnership Agreement (subject to certain limitations), dissolve the Partnership, and remove any General Partner and elect a replacement therefor. In addition, under the Partnership Agreement, each Limited Partner is entitled to review all books and records of the Partnership at any and all reasonable times.

7. The Partnership Agreement provides that certain significant actions cannot be taken by the Managing General Partner without the express consent of a majority in interest of the Limited Partners. Such actions include: (a) Sale at any one time of all or substantially all of the assets of the Partnership, except for (1) a sale of any one Local Limited Partnership interest in a twelve month period or (2) sales in connection with the liquidation and winding up of the Partnership's business upon its dissolution; (b) dissolution of the Partnership; and (c) causing the Partnership to merge or be consolidated with any other entity. The admission of a successor or additional General Partner would also require express consent under the Partnership Agreement.

8. Boston Financial Securities, Inc., an affiliate of the General Partners (the "Selling Agent"), will receive customary commissions and an underwriting advisory fee on the sale of the Units together with an expense allowance to defray accountable due diligence activities. The Selling Agent may authorize other members ("Soliciting Dealers") of the National Association of Securities Dealers, Inc. ("NASD") to sell Units. The Selling Agent will pay a concession to each Soliciting Dealer on all sales of Units by such Soliciting Dealer and may reallocate all or any portion of its expense allowance to such Soliciting Dealer. Such selling commissions are customarily charged in securities offerings of this type and are consistent with the guidelines of the NASD.

9. During the offering and organizational phase, the Managing General Partner and its Affiliates (as defined in the Partnership Agreement) will receive from the Partnership reimbursement of organizational, offering and selling expenses and an allowance for marketing expenses.

10. Acquisition phase fees payable to all persons, including the General Partners or their Affiliates, in

connection with the acquisition of interests in Local Limited Partnerships, will be limited by the guidelines adopted by NASAA. During the operating phase, the Partnership may pay additional fees or compensation to the General Partners or their Affiliates including, without limitation, an asset management fee. Such asset management fee is paid in consideration of the administration of the affairs of the Partnership in connection with each Local Limited Partnership in which the Partnership invests. Such other fees may be paid in consideration of property management services rendered by the General Partners or their Affiliates as the management and leasing agent for some of the Local Limited Partnerships and for consulting services rendered by the General Partners or their Affiliates as consultants to some of the Local Limited Partnerships. All such fees shall be subject to the terms of the Partnership Agreements. As well, the General Partners or their Affiliates may receive amounts from Local Limited Partnerships to the extent permitted by applicable law and regulations. Such amounts shall be paid in the event that the General Partners or their Affiliates are local general partners of the Local Limited Partnerships and all such amounts shall be subject to the terms of the Partnership Agreement.

Compensation to the General Partners or their Affiliates during the liquidating stage will be in the form of distributions of the proceeds of the sale or refinancing of Local Limited Partnership projects or interest, or of real personal property of the Partnership. In addition to the foregoing fees and interests, the General Partners or their Affiliates will be allocated generally 1% of profits and losses of the Partnership for tax purposes.

11. The substantial fees and other forms of compensation that will be paid to the General Partners or their Affiliates will not have been negotiated through arm's length negotiations. Terms of all such compensation, however, will be fair and not less favorable to the Partnership than would be the case if such terms had been negotiated with independent third parties. In addition, compensation in various forms will be paid to the local general partner of each Local Limited Partnership.

12. All proceeds of the public offering of Units will initially be placed in an escrow account with Shawmut Bank, N.A. ("Escrow Agent"). Pending release of offering proceeds to the Partnership, the Escrow Agent will deposit escrowed funds in the "Shawmut Interest Bearing

Account," a federally insured money market deposit account. The offering of Units will terminate not later than one year from the date upon which the Partnership's Registration Statement shall have been declared effective. If subscriptions for at least 5,000 Units have not been received by such termination date, no Units will be sold and funds paid by subscribers will be returned promptly, together with a pro rata share of any interest earned thereon. The Partnership will not accept any subscriptions for Units until the exemptive order applied for herein is granted or the Partnership receives an opinion of counsel that it is exempt from registration under the 1940 Act. Upon receipt of the prescribed minimum number of subscriptions, funds in escrow will be released to the Partnership and held in trust pending investment in Local Limited Partnerships. Any net proceeds not immediately utilized to acquire Local Limited Partnership interests or for other Partnership purposes will be invested and held in highly liquid, non-speculative securities which provide adequately for the preservation of capital. It is the Partnership's intention to apply capital raised in its public offering to the acquisition of Local Limited Partnership interests as soon as possible.

13. The Partnership Agreement provides that, subject to certain limitations including negligence and misconduct, the Partnership shall indemnify the General Partners and certain Affiliates for losses sustained by them or their Affiliates in connection with the business of the Partnership. However, the Partnership has been advised that in the opinion of the SEC indemnification for liabilities under the Securities Act is contrary to public policy as expressed in the Securities Act and is therefore unenforceable.

#### Applicants' Legal Conclusions

1. The exemption of the Partnership from all provisions of the 1940 Act is both necessary and appropriate in the public interest, because: (a) Investment in low and moderate income housing in accordance with the national policy expressed in Title IX of the Housing and Urban Development Act of 1968 is not economically suitable for private investors without the tax and organizational advantages of the limited partnership form; (b) the limited partnership structure provides the only means of bringing private equity capital into such housing; (c) the limited partnership form insulates each Limited Partner from personal liability and limits

his financial risk to the amount he has invested in the program, while also allowing the Limited Partner to claim on his individual tax return his proportionate share of the tax credits, income and losses from the investment; (d) the limited partnership form of organization is incompatible with fundamental provisions of the 1940 Act, such as the requirement of annual approval by investors of a management contract and the requirements concerning election of directors and the termination of the management contract; and (e) real estate limited partnerships such as the Partnership generally cannot comply with the asset coverage limitations imposed by section 18 of the 1940 Act. Also, an exemption from these basic provisions is necessary and appropriate so as not to discourage use of the two-tier limited partnership entity or frustrate the public policy established by the housing laws.

2. Interests in the Partnership will be sold only to (and transfers will be permitted only to) investors who meet specified suitability standards (as described above) which the Partnership believes are consistent with the requirements in Release No. 8456, with the guidelines of those states which prescribe suitability standards, and with the securities laws of all states where the Units will be sold. Such investors will receive extensive reports concerning the Partnership's business and operations. Although the interests of the General Partners and their Affiliates may conflict in various ways with the interests of Limited Partners, Limited Partners are adequately protected through disclosure of all potential conflicts in the Prospectus, including competition by Local Limited Partnerships with Affiliates for properties and the participation by an Affiliate as the Selling Agent for the offering. To address this conflict, the General Partners agree, in section 5.7 of the Partnership Agreement, that each General Partner and each Affiliate thereof, prior to entering into an investment which could be suitable for the Partnership or recommending such investment to others, must present to the Partnership the opportunity to enter into such investment and may not enter into such investment on its own behalf nor recommend it to others unless the Partnership has declined to enter into such investment. Further protection for the interests of Limited Partners is provided by the numerous provisions of the Partnership Agreement designed to prevent over-reaching by the General Partners and to assure fair dealing by the General Partners vis-a-vis the

Limited Partners. The Partnership will also file with the SEC and distribute certain financial documents and reports on its activities.

3. In addition, all compensation to be paid to the General Partners and their Affiliates is specified in the Partnership Agreement and Prospectus and no compensation will be payable to the General Partners or any of their Affiliates not so specified.

4. Release No. 8456 lists two conditions, designed for the protection of investors, which must be satisfied in order to qualify for the type of exemptive relief which the Partnership seeks: (1) "interests in the issuer should be sold only to persons for whom investments in limited profit, essentially tax-shelter, investments would not be unsuitable \* \* \*"; and (2) "requirements for fair dealing by the general partner of the issuer with the limited partners of the issuer should be included in the basic organizational documents of the company." The Partnership will comply with these conditions and will otherwise operate in a manner designed to insure investor protection.

5. The contemplated arrangement of the Partnership is not susceptible to abuses of the sort the 1940 Act was designed to remedy. The suitability standards described above, the requirements for fair dealing provided by the Partnership's governing instruments, and pertinent governmental regulations imposed on each Local Limited Partnership by various federal, state and local agencies, provide protection to investors in Units comparable to and in some respects greater than that provided by the 1940 Act. An exemption would therefore be entirely consistent with the protection of investors and the purposes and policies of the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Shirley E. Hollis,  
Assistant Secretary.

[FR Doc. 88-27667 Filed 11-30-88; 8:45 am]

BILLING CODE 8010-01-M

*Applicant:* Royal Business Funds Corporation.

*Relevant 1940 Act Section:* Section 8(f).

*Summary of Application:* Applicant seeks an order declaring that it has ceased to be an investment company.

*Filing Dates:* The application was filed on November 9, 1987, and amended on October 17, and November 21, 1988. A letter was submitted as an exhibit to the application on March 18, 1988, by the Small Business Administration ("SBA") regarding Applicant's liquidation status.

*Hearing or Notification of Hearing:* If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on December 20, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, c/o William J. Foster, IV, Esq., Hertzog, Calamari & Gleason, 100 Park Avenue, New York, New York 10017.

**FOR FURTHER INFORMATION CONTACT:** Victor R. Siclari, Staff Attorney, at (202) 272-3026 or Stephanie M. Monaco, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

#### **Applicant's Representations**

1. Applicant is a New York corporation formed in 1960 and licensed as a Small Business Investment Company ("SBIC") under the Small Business Investment Act of 1958. Applicant is registered with the SEC under the 1940 Act as a closed-end, non-diversified, management investment company. As a SBIC-licensed company, Applicant borrowed funds, the repayment of which was guaranteed by the SBA. Such funds were loaned to render financial assistance to small business concerns.

2. As of July 1982, Applicant was indebted to the SBA in an amount equal to \$23,321,745.91. At the same time its assets consisted largely of real properties acquired by Applicant as a result of liquidating collateral on defaulted loans which had been made to small business concerns.

3. On July 13, 1982, the United States of America brought an action against Applicant for a money judgment and for various other forms of relief. The SBA was appointed receiver of the Applicant and an orderly liquidation of assets was undertaken. Ernst and Whinney, the Applicant's independent accountants, was retained by the SBA to complete Applicant's financial statements for the four-month period beginning March 31, 1984, and ending on the close of business on July 31, 1984. On May 8, 1984, after a formal notice of the proposed settlement was sent to Applicant's stockholders and they were given an opportunity to object, a consent judgment and order in favor of the United States was issued for the full amount of the outstanding indebtedness. The judgment was settled on July 31, 1984, by a transfer of all of the Applicant's assets (except an office lease, equipment and furniture) to the SBA subject to the Applicant's liabilities. Further, the Applicant's SBIC license was surrendered in connection with the proceeding. As a result of the foregoing, Applicant was left with substantially no assets and no liabilities. On April 6, 1987, the SBA receivership of Applicant was terminated.

4. Applicant's present Board of Directors is constituted so as to comply with section 10 of the 1940 Act and will remain as such until Applicant schedules and holds a shareholder meeting and new directors are elected. At present, S. Pierre Bonan (Applicant's Chairman) and his wife own slightly in excess of 50% of Applicant's outstanding common stock.

5. The Board of Directors has concluded that it is in the best interest of the Applicant's shareholders to attempt to revive the Applicant rather than to dissolve it. In applying for deregistration under the 1940 Act, Applicant expects to recapitalize in an effort to engage in a business other than the investment company business. If successful, an existing net operating loss carry forward may provide tax relief as an offset to operating income. For this reason and the fact that Applicant is a publicly-owned corporation without substantial liabilities, the shareholders have a legitimate economic basis for reviving Applicant.

[Rel. No. IC-16655; 811-956, 811-1240]

#### **Royal Business Funds Corp.; Deregistration**

November 25, 1988.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for Deregistration under the Investment Company Act of 1940 ("1940 Act").

6. Applicant is not presently a party to any litigation or administrative proceeding, and Applicant does not anticipate that there will be any law suits or claims asserted against it or its directors and officers prior to being deregistered. Neither the Applicant nor any of its officers or directors is the subject of a court ordered injunction or any administrative proceeding.

7. Since July 31, 1984, the date the SBA assumed Applicant's existing liabilities, Applicant's Chairman has advanced funds to the Applicant for necessary services including rent, telephone, secretarial, accounting and legal expenses which he may seek to recover from the Applicant, with Board of Directors' approval, at some future date.

#### Applicant's Legal Conclusions

The requested order is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act because of the following reasons:

1. Applicant is no longer a closed-end, non-diversified, management investment company, licensed by the SBA as a SBIC, requiring registration under the 1940 Act;

2. The provisions of the 1940 Act and the protections normally afforded thereby to the shareholders of Applicant and the public were not intended to be applied to a company whose activities would not otherwise be covered by the 1940 Act;

3. Since the Applicant has substantially no assets, a dissolution could not be expected to result in distribution benefitting the shareholders; and

4. Continued registration under the 1940 Act will only serve to hamper efforts to raise capital and would be burdensome and involve administrative expenses associated with compliance under the 1940 Act that would have no relevance to the operations of Applicant.

#### Applicant's Conditions

If the requested order is granted, Applicant agrees to the following conditions:

1. Prior to deregistration, Applicant will obtain approval of its stockholders of the change in the nature of its business, as required under section 13(a)(4) of the 1940 Act, and for amendment of Applicant's Certificate of Incorporation for the same.

2. In soliciting proxies for the stockholder vote noted above, the

Applicant agrees to disclose in the proxy materials that deregistration under the 1940 Act is subject to majority stockholder approval, that deregistration is subject to approval of the SEC and that interested persons will have an opportunity to request a hearing on such deregistration.

3. A majority of those directors who are not "interested persons" as defined in section 2(a)(19) of the 1940 Act ("disinterested directors") shall also be required to approve the proposed change in the nature of Applicant's business based on a determination that it is in the best interests of the shareholders to approve such change and the Applicant will not participate in the proposed transaction to change Applicant's business on a basis different from or less advantageous than that of any other participant. The disinterested directors shall have its opportunity to consult with independent legal counsel when making such determinations.

4. A majority of the disinterested directors shall be required to approve reimbursement of costs incurred by the Chairman for necessary services based upon a finding that it is both reasonable and fair to the shareholders. Such reimbursement may not include compensation to the Chairman or his wife for services rendered.

5. Applicant does not intend in the future to hold itself out or propose to engage in the business of investing, reinvesting, owning, holding or trading in securities, or to own or propose to acquire investment securities, in such a manner as would otherwise require Applicant to register under the 1940 Act.

6. Applicant acknowledges, understands and agrees that the SEC's issuance of the order requested shall not limit the SEC's right to commence any future investigation, enforcement action or proceeding for violations of the 1940 Act if Applicant should ever come within the definition of an investment company contained in section 3(a) of the 1940 Act.

7. Applicant will file Form N-SAR for the period up until it is deregistered under the 1940 Act.

For the SEC, by the Division of Investment Management, under delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-27668 Filed 11-30-88; 8:45 am]

BILLING CODE 8010-01-M

## SMALL BUSINESS ADMINISTRATION

[Application No. 02/02-5525]

### Brighten Finance & Investment, Inc.; Application for License To Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1988)) by Brighten Finance & Investment, Inc., located at 36 West 44th Street, Room 812, New York, New York 10036, for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. 661 *et seq.*).

The proposed officers, directors, and shareholders of the Applicant are as follows:

Name	Title or Relationship	Percentage of shares owned
Chang WenMing, 185 Kensington Drive, Fort Lee, New Jersey 07024.	Board Chairman and Director.	39
Suez Chen, 229 Emily Drive, Park Ridge, New Jersey 07656.	Vice Chairman and Director.	0
Shiang-Chuan Huang, 33-69 168 Street, Flushing, New York 11358.	Director .....	11
James Y. A. Wang, 33 Richard Drive, Fort Lee, New Jersey 07024.	President and Director.	8
Chen-Yu Chang, Kensington Drive, Fort Lee, New Jersey 07024.	Director, Treasurer and Vice President.	10
Julius W. Sih, 608 Earlston Road, Kenilworth, Illinois 60043.	Director .....	6
Irene Wang, 33 Richard Drive, Short Hills, New Jersey 07078.	Secretary .....	22

The Applicant will conduct its operations in the State of New York. As a small business investment company under section 301(d) of the Act, the Applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Act and will provide assistance solely to

small concerns which will contribute to a well balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matter involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management including profitability and financial soundness in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, DC 20416.

A copy of the Notice will be published in a newspaper of general circulation in the New York City area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 23, 1988.

**Robert G. Lineberry,**  
*Deputy Associate Administrator for Investment.*

[FR Doc. 88-27712 Filed 11-30-88; 8:45 am]

BILLING CODE 8025-01-M

#### [Application No. 04/04-5249]

#### **Business Assistance Center-Minority Enterprise Small Business Investment Co., Inc.; Application for License To Operate as a Small Business Investment Company**

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1988)) by Business Assistance Center-Minority Enterprise Small Business Investment Company, Inc. (the Applicant), 6600 NW. 27th Avenue, Miami, Florida 33247, for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. 661 *et seq.*).

The proposed officers, directors, and shareholders of the Applicant are as follows:

Name	Position	Percentage of ownership
Garth C. Reeves, 119 NW. 90th Street, El Portal, Florida 33150.	Chairman/Director....	0
Ronald E. Frazier, 1320 NW. 88th Street, Miami, Florida 33147.	Vice Chairman/ Director.	0
Newall J. Daughtrey, 2331 NW. 140th Street, Opa Locka, Florida 33054.	President/CEO/ Manager Director.	0
William O. Cullom, 8445 SW. 151st Street, Miami, Florida 33158.	Secretary/Director....	0
Howard F. Kershaw, 8841 SW. 76th Street, Miami, Florida 33173.	Treasurer/Director....	0
Business Assistance Center, Inc., 6600 NW. 27th Avenue, Miami, Florida 33247.	Shareholder.....	100

<sup>1</sup> Contributors with a 10 percent or more economic interest in Business Assistance Center, Inc. are as follows: Ryder Systems, Inc., 3600 NW. 82nd Avenue, Miami, Florida 33122—10.18 percent; Knight-Ridder Newspaper, One Herald Plaza, Miami, Florida 33132—10.18 percent

The Applicant will begin operations with a capitalization \$1,100,000 and will be a source equity capital and long term loan funds for qualified small business concerns.

The Applicant will conduct its operations in the State of Florida.

As a small business investment company under section 301(d) of the Act, the Applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Act and will provide assistance solely to small concerns which will contribute to a well balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matter involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management including profitability and financial soundness in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this Notice, submit

written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of the Notice will be published in a newspaper of general circulation in the Miami, Florida area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 25, 1988.

**Robert G. Lineberry,**  
*Deputy Associate Administrator for Investment.*

[FR Doc. 88-27713 Filed 11-30-88; 8:45 am]

BILLING CODE 8025-01-M

#### [License No. 09/09-0377]

#### **Wells Fargo Capital Corp.; Issuance of a Small Business Investment Company License**

On July 21, 1988, a notice was published in the *Federal Register* (53 FR 27592), Vol. 53, No. 140, stating that an application has been filed by Wells Fargo Capital Corporation, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1988)) for a license as a small business investment company.

Interested parties were given until close of business August 21, 1988, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 09/09-0377 on November 15, 1988, to Wells Fargo Capital Corporation to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 25, 1988.

**Robert G. Lineberry,**  
*Deputy Associate Administrator for Investment.*

[FR Doc. 88-27714 Filed 11-30-88; 8:45 am]

BILLING CODE 8025-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### **Proposed Advisory Circular; Dynamic Evaluation of Transport Airplane Seats**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of availability of proposed Advisory Circular 25.562-1 and request for comments.

**SUMMARY:** This notice announces the availability of and requests comments on a proposed advisory circular which provides information and guidance for showing compliance with the standards recently promulgated for occupant protection during emergency landing conditions in transport category airplanes.

**DATE:** Comments must be received on or before December 21, 1988.

**ADDRESS:** Send all comments on the proposed AC to: Federal Aviation Administration, Transport Airplane Directorate, Aircraft Certification Service, Regulations Branch, ANM-114, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. Comments may be inspected at the above address between 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Patricia Siegrist, Regulations Branch, ANM-114, at the above address, telephone (206) 431-2128.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

A copy of the proposed AC may be obtained by contacting the person named above under "FOR FURTHER INFORMATION CONTACT." Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Commenters must identify AC 25.562-1, and submit comments in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA before issuing the final AC.

**Discussion**

On May 17, 1988, the FAA published Amendment 25-54 to part 25 of the Federal Aviation Regulations (53 FR 17640). This amendment upgrades the standards for occupant protection during emergency landing conditions in transport category airplanes, by revising the crew and passenger seat restraint requirements and by defining impact injury criteria. These standards require dynamic testing of the seats for strength, deformation, and protection of occupants from impact injury. Proposed Advisory Circular 25.562-1 provides guidance concerning acceptable means of compliance with these new standards, including test procedures for measuring loads and evaluating occupant injuries using an anthropomorphic test dummy. An earlier

draft of AC 25.562-1 was published for public comment on July 17, 1988 (51 FR 25990); however, since that time, the AC has undergone a major revision. The FAA therefore invites public comment on this new draft.

Issued in Seattle, Washington, on September 16, 1988.

Leroy A. Keith,

Manager, Transport Airplane Directorate,  
Aircraft Certification Service.

[FR Doc. 88-27634 Filed 11-30-88; 8:45 am]

BILLING CODE 4910-13-M

**Research, Engineering and Development Conference**

**ACTION:** Notice of conference.

**SUMMARY:** The Federal Aviation Administration will hold a Research, Engineering and Development (R,E&D) Conference for discussion of its R,E&D Plan on December 6 and 7, 1988.

**DATE, TIME, AND PLACE:** December 5, 1988, registration 12 Noon-8 :00 p.m., registration and conference December 6 and 7, 1988, 8:00 a.m.-5:00 p.m.; Sheraton Washington Hotel, 2660 Woodley Road at Connecticut Avenue NW., Washington, DC 20008.

**AGENDA:** The conference will employ panel discussions followed by open forums to obtain comments and recommendations from the aviation community on how the FAA should tailor its R,E&D program to fulfill its missions in aviation safety, capacity, efficiency, and security.

Draft copies of the R,E&D Plan will be made available to registered conference attendees on December 5 at the conference location to serve as a basis for discussions. The registration fee is \$40.00.

**FOR FURTHER INFORMATION CONTACT:** Conference coordinators Lois Bossman/Ruth Potter at (617) 494-2307, DTS-930, Transportation Systems Center, Kendall Square, Cambridge, Massachusetts 02142.

T.A. Lorier,

Acting Division Manager, Research  
Development Management and Control.

[FR Doc. 88-27633 Filed 11-30-88; 8:45 am]

BILLING CODE 4910-13-M

**DEPARTMENT OF THE TREASURY**

**Public Information Collection Requirements Submitted to OMB for Review**

Date: November 23, 1988.

The Department of Treasury has submitted the following public

information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

**Alcohol, Tobacco and Firearms**

OMB Number: New.

Form Number: ATF F 5200.23.

Type of Review: New Collection.

Title: Pipe Tobacco Floor Stocks Tax Return.

Description: Dealers who owe pipe tobacco floor stocks tax are required to complete this form. The form is used to indicate the amount of floor stocks tax liability for each taxpayer. The form is needed for revenue protection purposes.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 3,000.

Estimated Burden Hours Per Response: 1 hour.

Frequency of Response: One-time.

Estimated Total Reporting Burden: 3,000 hours.

Clearance Officer: Robert Masarsky, (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-27625 Filed 11-30-88; 8:45 am]

BILLING CODE 4810-25-M

**Public Information Collection Requirements Submitted to OMB for Review**

Date: November 22, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed

and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

**Alcohol, Tobacco and Firearms**

*OMB Number:* 1512-0025.

*Form Number:* ATF Form 2 (5320.2).

*Type of Review:* Extension.

*Title:* Notice of Firearms Manufactured or Imported.

*Description:* The National Firearms Act required licensed importers and manufacturers to notify ATF when firearms are imported or manufactured. This action registers the firearms in the National Firearms Registration and Transfer Record and makes their possession of the firearms lawful. Tax otherwise due under 26 U.S.C. 5821 does not apply.

*Respondents:* Businesses or other for-profit.

*Estimated Number of Respondents:* 160.

*Estimated Burden Hours Per*

*Response:* 30 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden:* 1,200 hours.

*OMB Number:* 1512-0188.

*Form Number:* ATF F 5100.1.

*Type of Review:* Extension.

*Title:* Signing Authority for Corporate Officials.

*Description:* ATF F 5100.1 is substituted instead of a regulatory requirement to submit corporate documents or minutes of a meeting of the Board of Directors to authorize an individual or position of power to sign for the corporation on matters dealing with ATF. The form identifies the corporation, the individual or corporation position getting power to sign, and documents authorizing the power.

*Respondents:* Businesses or other for-profit.

*Estimated Number of Respondents:* 1,000.

*Estimated Burden Hours Per Response:* 15 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden:* 250 hours.

*Clearance Officer:* Robert Masarsky, (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

*OMB Reviewer:* Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

*Dale A. Morgan,*

*Departmental Reports Management Officer.*  
[FR Doc. 88-27626 Filed 11-30-88; 8:45 am]

BILLING CODE 4810-25-M

# Sunshine Act Meetings

Federal Register

Vol. 53, No. 231

Thursday, December 1, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

## U.S. COMMISSION ON CIVIL RIGHTS

November 29, 1988.

**PLACE:** Stouffer Nashville Hotel, 401 Church Street, Nashville, TN 37219.

**DATE AND TIME:** Friday, December 9, 1988, 3:30 p.m.-5:00 p.m.

**STATUS OF MEETING:** Open to the public.

### MATTERS TO BE CONSIDERED:

- I. Approval of Agenda
- II. Approval of Minutes of November Meeting
- III. Announcements
- IV. Discussion and Action: *Patterson v. McLean Credit Union; Should Runyon v. McCrary be Reconsidered*
- V. Interim Appointment: Mississippi
- VI. SAC Reports:
  - Racial, Ethnic and Religious Vandalism and Bigotry in Affected Communities in Essex County, New Jersey*
  - Stemming Bias-Related Acts in Massachusetts*
  - The 1990 Census: Preparations and Issues (New York)*
- VII. Staff Director's Report
  - A. Status of Earmarks
  - B. Personnel Report
  - C. Activity Report
- VIII. Discussion and Action Regarding Revised Draft, *Medical Discrimination Against Children with Disabilities*

IX. Future Agenda Items  
A motion by the regional forums subcommittee to move the forum scheduled for February to April

**PERSON TO CONTACT FOR FURTHER INFORMATION:** John Eastman, Press and Communications Division, (202) 376-8312.

William H. Gillers,  
*Solicitor.*

[FR Doc. 88-27784 Filed 11-29-88; 3:38 pm]

BILLING CODE 6335-01-M

## FEDERAL ELECTION COMMISSION

\* \* \* \* \*

**PREVIOUSLY ANNOUNCED DATE AND TIME:** Thursday, December 1, 1988, 10:00 a.m.  
Federal Register No. 88-27308

**THE ABOVE MEETING DATE AND TIME WERE CHANGED TO:** Wednesday, November 30, 1988, 10:00 a.m.

This meeting will be closed to the public.

\* \* \* \* \*

**DATE AND TIME:** Thursday, December 8, 1988, 10:00 a.m.

**PLACE:** 999 E Street, NW., Washington, DC (Ninth Floor).

**STATUS:** This meeting will be open to the public.

### MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.  
Correction and Approval of Minutes.

Certification for Payment of 1988 Primary Matching Funds.

Draft AO 1988-48: Joyce Hamilton on behalf of the National-American Wholesale Grocers' Association, Inc.  
Administrative Matters

\* \* \* \* \*

**DATE AND TIME:** Thursday, December 8, 1988, following adjournment of Open Session.

**PLACE:** 999 E Street, NW., Washington, DC.

**STATUS:** This meeting will be closed to the public.

### ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

\* \* \* \* \*

### PERSON TO CONTACT FOR INFORMATION:

Mr. Fred Eiland, Information Officer,  
Telephone: 202-376-3155.

Marjorie W. Emmons,

*Secretary of the Commission.*

[FR Doc. 88-27752 Filed 11-29-88; 11:38 am]

BILLING CODE 6715-01-M

# Corrections

Federal Register

Vol. 53, No. 231

Thursday, December 1, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Part 28

#### Federal Acquisition Regulation (FAR); Individual Sureties

##### *Correction*

In proposed rule document 88-25274 beginning on page 44564 in the issue of Thursday, November 3, 1988, make the following correction:

#### 28.203 [Corrected]

On page 44565, in the second column, in 28.203(c), in the 10th line, "note" should read "not be".

BILLING CODE 1505-01-D

## ENVIRONMENTAL PROTECTION AGENCY

[OPP-180792; FRL-3473-2]

### Receipt of an Application for a Specific Exemption to Use Avermectin B.; Solicitation of Public Comment

##### *Correction*

In notice document 88-25932 beginning on page 45382 in the issue of Wednesday, November 9, 1988, make the following correction:

On page 45382, in the third column, under **SUPPLEMENTARY INFORMATION**, in the second paragraph, in the fifth line, "MSD ABVET" should read "MSD AGVET".

BILLING CODE 1505-01-D

## ENVIRONMENTAL PROTECTION AGENCY

[OPTS-44518; FRL-3474-4]

### TSCA Chemical Testing; Receipt of Test Data

##### *Correction*

In notice document 88-25934 appearing on page 45385 in the issue of Wednesday, November 9, 1988, make the following corrections:

1. In the second column, in the third paragraph under **I. Test Data Submissions**, in the fifth line, "790.1700" should read "799.1700".

2. In the third column, under **II. Public Record**, in the fourth line, "44158" should read "44518".

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Toxic Substances and Disease Registry

## ENVIRONMENTAL PROTECTION AGENCY

[ATSDR-6]

### Hazardous Substances Priority List, Toxicological Profiles; Second List

##### *Correction*

In notice document 88-24295 beginning on page 41280 in the issue of Thursday, October 20, 1988, make the following corrections:

1. On page 41281, in the first column, in the last paragraph, in the fifth line from the bottom, "of" should read "on".

2. On page 41282, in the 2nd column, under "NPL Technical Data Base (NPLt)", in the 14th line, "case" should read "base".

3. On page 41283, in the 3rd column, in the 1st complete paragraph, in the 12th line from the bottom, insert "site" after "their".

4. On page 41284, in the second column, the second table should have been designated as **Priority Group 4**.

5. On page 41285, in the second column, in **Priority Group 4**, the fifth Substance name should read "Hexachloroethane".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Parts 780, 784, 816 and 817

### Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Performance Standards; Permanent and Temporary Impoundments

##### *Correction*

In rule document 88-24536 beginning on page 43584 in the issue of Thursday, October 27, 1988, make the following corrections:

1. On page 43586, in the 2nd column, under **II Discussion of Final Rule and Comments**, in the 1st paragraph, in the 12th line, "hs" should read "has".

2. On page 43589, in the third column, in the first complete paragraph, in the third line, "is" should read "in".

3. On page 43593, in the third column, in the second complete paragraph, in the last line, after "process", insert "in".

4. On page 43598, in the 2nd column, in the 4th complete paragraph, in the 13th line, "storage" was misspelled.

5. On page 43600, in the 3rd column, in the 2nd complete paragraph, in the 12th line, "rule" should read "rules".

6. On page 43602, in the first column, in the first complete paragraph, in the seventh line, "believes" was misspelled.

7. On the same page, in the 2nd column, each time the acronym "OSRME" appears, it should read "OSMRE".

8. On page 43603, in the second column, in the third complete paragraph, in the fourth line, "MSHJA" should read "MSHA".

#### § 784.16 [Corrected]

9. On page 43605, in the second column, in § 784.16(c)(3), in the second line, "of" should read "or".

BILLING CODE 1505-01-D

**VETERANS ADMINISTRATION**

**48 CFR Part 852**

**Acquisition Regulations Relating to  
Cost Comparisons**

*Correction*

In rule document 88-26695 appearing on page 46872 in the issue of Monday, November 21, 1988, make the following correction:

In the first column, in amendatory instruction 3, in the second line, "852-72" should read "852.207-72".

**BILLING CODE 1505-01-D**



**Food and Drug Administration**

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**Thursday  
December 1, 1988**

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**Part II**

**Department of  
Health and Human  
Services**

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**Food and Drug Administration**

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**21 CFR Part 882**

**Neurological Devices; Effective Date of  
Requirement for Premarket Approval;  
Implanted Intracerebral/Subcortical  
Stimulator for Pain Relief; Final Rule**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Food and Drug Administration****21 CFR Part 882**

[Docket No. 85M-0056]

**Neurological Devices; Effective Date of Requirement for Premarket Approval; Implanted Intracerebral/Subcortical Stimulator for Pain Relief****AGENCY:** Food and Drug Administration.**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is issuing a final rule to require the filing of an application for premarket approval (PMA) or a notice of completion of a product development protocol (PDP) for the implanted intracerebral/subcortical stimulator for pain relief, a generic type of medical device. After the effective date, commercial distribution of this device must cease, unless a manufacturer or importer has filed with FDA a PMA or a notice of completion of a PDP for its version of the implanted intracerebral/subcortical stimulator for pain relief. The requirement of premarket approval does not compel explantation (surgical removal) of previously implanted devices, whether or not the manufacturer or importer files a PMA or PDP. A decision on whether to recommend explantation of an already-implanted intracerebral/subcortical stimulator for pain relief should be made on an individual basis, depending on whether that course of action is necessary to protect an individual patient's health. This action is being taken under the Medical Device Amendments of 1976.

**EFFECTIVE DATE:** March 1, 1989.

**FOR FURTHER INFORMATION CONTACT:** Robert F. Munzner, Center for Devices and Radiological Health (HFZ-430), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7226.

**SUPPLEMENTARY INFORMATION:** In the Federal Register of September 4, 1979 ((44 FR 51772), FDA published a final rule (21 CFR 882.5840) classifying into class III (premarket approval) the implanted intracerebral/subcortical stimulator for pain relief, a medical device. Section 882.5840 applies to (1) any implanted intracerebral/subcortical stimulator for pain relief that was in commercial distribution before May 28, 1976, the date of enactment of the Medical Devices Amendments of 1976 (the amendments) (Pub. L. 94-295), and (2) any device that FDA has found to be

substantially equivalent to the implanted intracerebral/subcortical stimulator for pain relief and that has been marketed on or after May 28, 1976. For the sake of convenience, both the devices that were on the market before May 28, 1976, and the substantially equivalent devices that were marketed on or after that date are referred to as "preamendments devices."

In the Federal Register of July 25, 1985 (50 FR 30277), FDA published a proposed rule to require the filing under section 515(b) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(b)) of a PMA or a notice of completion of a PDP for the implanted intracerebral/subcortical stimulator for pain relief. In accordance with section 515(b)(2)(A) of the act, FDA included in the preamble to the proposal the agency's proposed findings with respect to the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to meet the premarket approval requirements of the act, and the benefits to the public from use of the device (50 FR 30278). The preamble to the proposal also provided an opportunity for interested persons to submit comments on the proposed rule and the agency's proposed findings. Under section 515(b)(2)(B) of the act, FDA also provided an opportunity for interested persons to request a change in the classification of the device based on new information relevant to its classification. Any petition requesting a change in the classification of the implanted intracerebral/subcortical stimulator for pain relief was required to be submitted by August 9, 1985. The comment period closed on September 23, 1985.

Although FDA did not receive any petitions requesting a change in the classification of the device, several persons submitted comments relating their clinical experiences with the device. Summaries of these comments and the agency's responses follow:

1. Many comments were concerned that FDA may intend to remove the device from commercial distribution by requiring premarket approval. Some persons who submitted comments provided data on the device's safety and effectiveness to persuade FDA to allow its continued distribution.

The agency has not yet made a decision regarding the safety and effectiveness of the generic type of device, the implanted intracerebral/subcortical stimulator for pain relief. (See 21 CFR 860.3(i) for a definition of the term "generic type of device.") The purpose of requiring premarket approval of the device is to obtain the data necessary for FDA to evaluate its safety

and effectiveness. FDA believes that safety and effectiveness data are (or should be) readily available to the manufacturers of the device, because the manufacturers have known since the device was classified into class III in 1979 that the device would eventually be subject to the premarket approval requirements in section 515 of the act (21 U.S.C. 360e) and 21 CFR Part 814. Thus, FDA believes that it has given ample notice. FDA believes that much of the data submitted in the comments on the proposal would be useful to manufacturers during their preparation of PMA's for the device.

2. One comment argued that sufficient data currently exist to determine the safety and effectiveness of the device and that further data collection is unnecessary and unduly burdensome.

Because of the kinds of data submitted by the comments on the proposal, FDA agrees that manufacturers of the implanted intracerebral/subcortical stimulator for pain relief may have sufficient data available now and generation of much additional data may not be necessary. Under the amendments enacted by Congress (section 515 of the act) and FDA's implementing regulations, the agency proposed to require that manufacturers submit data on the safety and effectiveness of the device in the form of a PMA as described in 21 CFR Part 814, or submit to FDA a petition requesting reclassification of the device under section 513(e) of the act (21 U.S.C. 360c(e)) and Subpart C of 21 CFR Part 860. Because no petitions requesting reclassification of the device have been received, FDA now is requiring each manufacturer to submit a PMA or cease commercial distribution of the device.

3. Many comments said that the risks to health identified in the proposed regulation (damage to neural tissue, surgical complications, tolerance to stimulation, skin erosion, cerebrospinal fluid leakage, and tissue toxicity) appear exaggerated, as discussed below:

a. The comments said that in the proposed rule FDA had described neural damage and undesirable neurological effects as a result of implantation and use of this device. Several comments stated that little, if any, evidence has been observed of neural damage, either clinically or in histological data. The comments stated that few post-mortem studies have been performed, but in those done, only minimal morphological changes were seen, and those changes observed were considered to be of no greater extent than damage caused by other routine neurological procedures. In addition, comments argued that

neurological deficits and side effects are rare, and the comments concluded that these risks to health generally resulted from improper placement of electrodes or overstimulation. The comments stated that new designs for electrodes and the development of more precise placement sites, techniques, and stimulation parameters have alleviated most risks of neural damage.

FDA agrees that neural damage and neurological deficits may be infrequent occurrences. In the proposed rule, FDA presented sufficient data to establish that some neural risks to health are associated with the use of this device. The discussion of risks to health presented in the proposed regulation omits any conclusion with regard to these risks. FDA intended to identify the risks that might be eliminated or reduced by requiring premarket approval. FDA also recognizes that improvements may have been made in some of the electrodes used. However, FDA believes that it must perform a detailed analysis of the data on the risks to health from use of the device to provide reasonable assurance of its safety and effectiveness.

b. Several comments believe that FDA's proposed rule exaggerated the risks to health of intraventricular hemorrhage and infection which can result from the implantation procedure. According to studies cited by the comments, infection occurs in a very small percentage of patients; and in these few cases, infection is easily treated with antibiotics or by explanation of the device. The comments stated that the risk of infection is the same or less than from use of similar stereotaxic techniques. The comments also regard the incidence of hemorrhage caused by implantation to be rare, and suggest that the risk is also no more than that involved in similar stereotaxic procedures.

FDA agrees that the incidence of hemorrhage and infection may be infrequent. The proposed rule cites the occurrence of these complications as potentially serious adverse effects associated with the use of this device. The agency believes that regulation of the intracerebral/subcortical stimulator for pain relief through premarket approval is appropriate to assure that these risks are minimized.

c. Some comments asserted that electrode migration is a former problem attributable to poor electrode design and to difficulty in securing the wires to the skull. The comments also asserted that improved electrode design and use of a new burr hole cover and locking component have alleviated the electrode migration problem.

FDA recognizes that new electrode designs and new surgical methods may have reduced the incidence of electrode migration. However, FDA believes that these innovations must be evaluated carefully to determine their impact on the safety and effectiveness of each manufacturer's device.

d. The development of tolerance to electrical stimulation was discussed by several comments. The comments agreed with data cited in the proposed rule which indicated that patients' development of tolerance to electrical stimulation may be the reason that the device becomes ineffective in about 30 percent of patients in whom it is implanted. However, most of the comments disagreed with the data cited in the proposed rule which indicated that a patient who develops tolerance to electrical stimulation frequently also develops tolerance to pain-relieving drugs. The comments also said that, in many cases, the electrical tolerance can be treated through administration of certain drugs.

FDA recognizes that tolerance to stimulation has been reported in 30 percent of the patients treated with the implanted intracerebral/subcortical stimulator for pain relief. These data, along with other data on effectiveness, will be considered by FDA during its review of any PMA's submitted for the device.

e. Several comments discussed the risk to health of cerebrospinal fluid leakage. The comments noted that the studies cited in the proposed rule that pertained to CSF leakage were studies of cerebellar stimulation using the implanted cerebellar stimulator (21 CFR 882.5820). The comments noted that the implant procedure for the cerebellar stimulator involves an open craniotomy as opposed to the burr hole implant procedure used for the intracerebral/subcortical stimulator for pain relief. Therefore, the comments said, the data from these cited studies do not provide an accurate assessment of the risk of cerebrospinal fluid leakage associated with the latter device.

FDA recognizes that the level of risk to health of cerebrospinal fluid leakage associated with use of the intracerebral/subcortical stimulator for pain relief may be lower than the level of risk of cerebrospinal fluid leakage associated with use of the implanted cerebellar stimulator. However, FDA believes that these two devices are sufficiently similar to suggest that a potential risk of cerebrospinal fluid leakage may result from use of the implanted intracerebral/subcortical stimulator for pain relief and that premarket approval is necessary to minimize this risk to health.

FDA advises that the agency has already promulgated a rule requiring any manufacturer of the implanted cerebellar stimulator to submit a PMA for the device or cease commercial distribution (49 FR 26574; June 28, 1984).

f. Several comments said that skin erosion occurs infrequently and that skin erosion was caused by bulky electrode connectors. The comments said that the design of these connectors have been modified to reduce their bulk.

FDA recognizes that manufacturers have made improvements in the design of the electrode connectors which may reduce the risk of skin erosion. However, FDA believes that it should review these data in the form of a PMA to provide reasonable assurance of the safety and effectiveness of this device.

4. Many comments said that in the proposed regulation FDA understated the benefits that can be derived from use of the implanted intracerebral/subcortical stimulator for pain relief. The comments said that use of this device has improved the quality of life for many patients who otherwise are often addicted to drugs, or become suicidal. The comments stated that use of this device for pain relief is a reversible therapy, as opposed to other surgical and ablative techniques. Many comments said that site selection for implantation of the electrodes to treat specific types of pain has become more accurately defined, making patient selection easier and, thus, making use of the device more effective.

FDA recognizes that there are reports of patients who have achieved relief of pain through the use of this device, and also that improvements are being made with respect to the site of electrode implantation and patient selection. However, FDA believes that the degree of benefit offered by this device must be carefully and accurately defined by analysis of all relevant data. Data in the proposed rule identified some of the benefits found in the scientific literature and also identified some areas where FDA believes that more data need to be studied to assure the safety and effectiveness of these devices.

FDA has reexamined its proposed findings with respect to the degree of risk of illness of injury designed to be eliminated or reduced by requiring the implanted intracerebral/subcortical stimulator for pain relief to meet the statute's approval requirements. The agency concludes that its proposed findings and its conclusion discussed in the preamble to the proposed rule are appropriate. Accordingly, FDA is promulgating a final rule requiring premarket approval of the implanted

intracerebral/subcortical stimulator for pain relief under section 515(b)(3) of the act and is summarizing its findings with respect to the degree of risk of illness or injury designed to be eliminated or reduced by requiring that the implanted intracerebral/subcortical stimulator for pain relief have an approved PMA or declared completed PDP, and with respect to the benefits to the public from the use of the device.

## I. Findings With Respect to Risks and Benefits

### A. Degree of Risk

1. *Damage to neural tissue.* The electrical current used for stimulation and the presence of the electrode may cause injury to brain tissue. Charge densities used to treat patients cannot be determined from published reports of clinical studies. Animal studies indicate that by using low charge densities, electrical injury to brain tissue can be minimized. One study concluded that the upper limit for safe stimulation is 0.05 watt per square inch when biphasic electrical pulses are used. Another study concluded that some neural damage is consistently produced if the charge per phase of the stimulus pulse is 0.45 microcoulomb or greater. Still another study revealed that neural damage in the cerebral cortex of cats increased proportionally as the charge density per phase increased over the range of 40 to 400 microcoulombs per square centimeter per phase. Several undesirable neurological effects, including coagulated brain tissue, blurring of vision, lesions in the target points, vertigo, focal and motor seizures, and emotional changes have been reported in patients treated with deep brain stimulation.

2. *Surgical complications.* Complications may occur because of the surgical implantation procedures. Because the surgical procedures involve the brain, complications such as punctured blood vessels, intraventricular hemorrhage, and infections are usually serious. One reported death has occurred due to infection.

3. *Electrode migration.* Implanted electrodes can spontaneously move from their original position or they can be dislodged. Electrode movement may cause damage to brain tissue or produce stimulation in an area of the brain which may result in undesirable neurological effects. Electrode migration has been reported in 2 to 17 percent of patients.

4. *Tolerance.* Tolerance to stimulation may develop and has been reported to occur in 30 percent of patients in whom the device is implanted. Patients who

have become tolerant to deep brain stimulation may also demonstrate tolerance to some pharmacological opiates. If such tolerance occurs, the patient would not be able to obtain relief of pain with electrical stimulation or with narcotic analgesics.

5. *Skin erosion.* Erosion of the skin can occur in the scalp over the area where the electrodes exit from the cranium or can occur over the site of the receiver. Erosion of the device through the scalp may be the most troublesome source of infection and may necessitate the explanation of the device.

6. *Cerebrospinal fluid leakage.* Cerebrospinal fluid leakage is a risk common to devices implanted in the central nervous system. When this occurs, reoperation is required to correct the condition.

7. *Tissue toxicity.* Although the surface materials used in the implanted receiver, lead wires, or electrodes are generally believed to be biocompatible, it is possible that contaminants may be introduced into the materials used in the device during its manufacture, causing adverse tissue reactions.

Considering the risks and probable benefits associated with the implanted intracerebral/subcortical stimulator for pain relief, FDA concludes that the device should undergo premarket approval to establish conditions for use that will minimize risks and determine whether the risks of using the device are balanced by benefits to patients.

### B. Benefits of the Device

The benefits of the implanted intracerebral/subcortical stimulator for pain relief to patients are questionable. Published reports indicate that the device may provide pain relief for selected patients, but may not be suitable for treating certain patients or all types of pain.

The implanted intracerebral/subcortical stimulator for pain relief has been reported to provide relief from peripheral chronic pain syndrome resulting from carcinomas, failed low backs, nerve entrapments, and phantom limb syndromes. Some investigators have reported successful treatment of pain of central origin, e.g., thalamic syndromes, brain stem infarction, and spinal cord injury. Other investigators have concluded that the device is probably not beneficial in treating central pain. Electrical stimulation of both the periaqueductal gray and periventricular gray matter appears to produce opiate-mediated analgesia; stimulation in these areas may produce unpleasant or intolerable side effects. Other researchers have reported pain relief with stimulation within the

internal capsule, although there is not any indication that endogenous opiates are produced when this area is stimulated. Additional data are required to explain the variable clinical results obtained to date with the device.

## II. Final Rule

Under section 515(b)(3) of the act, FDA is adopting the proposed findings as published in the preamble to the proposed rule and is issuing this final rule to require premarket approval of the generic type of device, the implanted intracerebral/subcortical stimulator for pain relief, by revising paragraph (c) in § 882.5840.

Under the final rule, a PMA or a notice of completion of a PDP is required to be filed on or before March 1, 1989, for any implanted intracerebral/subcortical stimulator for pain relief that was in commercial distribution before May 28, 1976, or that has been found by FDA to be substantially equivalent to such a device on or before March 1, 1989. An approved PMA or a declared completed PDP is required to be in effect for any such device on or before August 28, 1989. (If FDA finds that continued availability of an implanted intracerebral/subcortical stimulator for pain relief for which a PMA has been timely filed is necessary for the public health, FDA may, under section 515(d)(1)(B)(i) of the act, extend the 180-day period for taking action on the PMA.) Any implanted intracerebral/subcortical stimulator for pain relief that was not in commercial distribution before May 28, 1976, or that has not on or before March 1, 1989, been found by FDA to be substantially equivalent to an implanted intracerebral/subcortical stimulator for pain relief that was in commercial distribution before May 28, 1976, is required to have an approved PMA or a declared completed PDP in effect before it may be marketed.

If a PMA or a notice of completion of PDP for an implanted intracerebral/subcortical stimulator for pain relief is not filed on or before March 1, 1989, that device will be deemed adulterated under section 501(f)(1)(A) of the act (21 U.S.C. 351(f)(1)(A)), and commercial distribution of the device will be required to cease. The device may, however, be distributed for investigational use, if the requirements of the investigational device exemption (IDE) regulations (21 CFR Part 812) are met.

Under § 812.2(d) of the IDE regulations, FDA hereby stipulates that the exemptions from the IDE requirements in § 812.2(c) (1) and (2) will no longer apply to clinical investigations

of the implanted intracerebral/subcortical stimulators for pain relief. Further, FDA concludes that investigational implanted intracerebral/subcortical stimulators for pain relief are significant risk devices as defined in § 812.3(m), and advises that as of the effective date of § 882.5840(c) the requirements of the IDE regulations regarding significant risk devices will apply to any clinical investigation of an implanted intracerebral/subcortical stimulator for pain relief. For any such device, therefore, an IDE submitted to FDA, under § 812.20, is required to be in effect under § 812.30 before an investigation is initiated or continued on or after March 1, 1989. FDA advises all persons who intend to sponsor any clinical investigation involving the implanted intracerebral/subcortical stimulator for pain relief to submit an IDE application to FDA no later than January 30, 1989, to avoid the interruption of ongoing investigations.

As discussed at length in paragraph 1 of the preamble to the final PMA rule (51 FR 26342, 26343; July 22, 1986), FDA will not request recall, or recommend seizure, of an implanted device under circumstances that would necessitate explantation of the device to effect recall or seizure unless such action is necessary to protect the health of the patient. If an implanted device is adulterated under section 501(f)(1)(A) of the act because of the manufacturer's failure to submit a PMA and explantation of the device is not necessary to protect the health of the patient, FDA will require only that commercial distribution of the device cease. FDA also may invoke its authorities under section 518 of the act (21 U.S.C. 360h) to require notification,

repair, replacement, or refund when a device in commercial distribution presents an unreasonable risk of substantial harm to the public health.

### III. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) and (e)(4) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

### IV. Economic Impact

FDA has examined the economic consequences of this final rule in accordance with the criteria in section 1(b) of Executive Order 12291 and found that the rule will not be a major rule as specified in the Order. The agency believes that only three small firms will be affected by this rule. Therefore, the agency certifies under the Regulatory Flexibility Act (Pub. L. 96-354) that the rule will not have a significant economic impact on a substantial number of small entities. An assessment of the economic impact of this final rule has been placed on file in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

#### List of Subjects in 21 CFR Part 882

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 882 is amended as follows:

## PART 882—NEUROLOGICAL DEVICES

1. The authority citation for 21 CFR Part 882 continues to read as follows:

Authority: Sec. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794-795 as amended, 90 Stat. 540-548, 552-559, 565-574, 576-577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

2. Section 882.5840 is amended by revising paragraph (c) to read as follows:

**§ 882.5840 Implanted intracerebral/subcortical stimulator for pain relief.**

(c) *Date premarket approval application (PMA) or notice of completion of a product development protocol (PDP) is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before March 1, 1989, for any implanted intracerebral/subcortical stimulator for pain relief that was in commercial distribution before May 28, 1976, or that has on or before March 1, 1989, been found to be substantially equivalent to an implanted intracerebral/subcortical stimulator for pain relief that was in commercial distribution before May 28, 1976. Any other implanted intracerebral/subcortical stimulator for pain relief shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

Dated: October 11, 1988.

John M. Taylor,  
Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-27689 Filed 11-30-88; 8:45 am]

BILLING CODE 4160-01-M



**Federal Reserve**

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**Thursday  
December 1, 1988**

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**Part III**

**Department of the  
Treasury**

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**Comptroller of the Currency**

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**12 CFR Part 8**

**Assessment of Fees; National Banks and  
District of Columbia Banks; Final Rule**

**DEPARTMENT OF THE TREASURY****Comptroller of the Currency****12 CFR Part 8****[Docket No. 88-17]****Assessment of Fees; National Banks and District of Columbia Banks****AGENCY:** Comptroller of the Currency, Treasury.**ACTION:** Final rule.

**SUMMARY:** The Office of the Comptroller of the Currency ("OCC") is revising the semiannual assessment schedule for national banks, District of Columbia banks, and federally licensed branches and agencies of foreign banks. The revised schedule replaces the current schedule for assessments due by January 31, 1989, and beyond. Assessments are increased by 14 percent. This revision is necessary due to a predicted revenue shortfall which results from decreased revenue growth and increased supervisory responsibilities brought on by the increasing complexity of the financial services industry and the deteriorated condition of many national banks. This action will permit the OCC to continue to fulfill its statutory responsibilities. For long-term planning purposes, the OCC has established a task force to study the agency's revenue policy and structure.

**EFFECTIVE DATE:** January 3, 1989.

**FOR FURTHER INFORMATION CONTACT:** Roy C. Madsen, Associate Director, Financial Management Division, (202) 447-0956 or Ferne Fisherman Rubin, Attorney, Legal Advisory Services Division, (202) 447-1880, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East SW., Washington, DC 20219.

**SUPPLEMENTARY INFORMATION:****Background**

The OCC was created by Federal legislation for the purpose of regulating and supervising the national banking system. Under the National Bank Act, 12 U.S.C. 1 *et seq.*, the OCC has a responsibility to supervise national banks and to ensure that they comply with applicable law. Pursuant to 12 U.S.C. 482, the OCC recovers its expenses by assessing national banks "in proportion to their assets or resources." The statute also requires that the rate of assessment be the same for all banks of the same asset size. The current assessment schedule, found at 12 CFR Part 8, fulfills this statutory requirement.

**Proposal**

On August 19, 1988, the OCC published a notice of proposed rulemaking (Docket No. 88-13) in the Federal Register (53 FR 31705), concerning the assessment schedule. In that notice, the OCC proposed to increase the assessments due by January 31, 1989 and beyond by 14 percent. The OCC estimates this will increase its assessment revenue in 1989 by approximately \$28 million. In future years, the amount of increased revenue will vary, based on the growth in banking assets, the size distribution of banks, and the rate of inflation. A copy of the proposal was sent as Banking Bulletin 88-25 dated August 24, 1988, to the chief executive officer of each national bank. The purpose of the Banking Bulletin was to ensure that each national bank received direct and timely notice of the proposed assessment increase and to explain the reasons in detail.

On September 6, 1988 (53 FR 34307), the OCC published a technical correction to the notice of proposed rulemaking in the Federal Register. The correction restored a line to a table showing the proposed assessment schedule. The line was inadvertently deleted due to a printing error. None of the proposed rates were changed by the technical correction.

On September 20, 1988 (53 FR 36556), the OCC extended the comment period to October 3, 1988 to address a request by an association representing approximately 2,000 national banks. The purpose of the extended comment period was to allow additional time for all interested parties to assess the proposal further and to file comments. With this action, we are finalizing the proposal to increase the assessment rates by 14 percent.

**Reason for the Action**

As a result of stringent cost reduction efforts, the OCC expects expenses to match its revenues in 1988. However, unless the present assessment schedule is revised, a deficit will occur in 1989, and deficits will increase in future years. The increasing resource demands of the OCC's bank supervisory responsibilities have outpaced the OCC's ability to fund those demands. The 14 percent assessment increase is the amount necessary to fund the projected deficit and provide funds for the resource demands of the supervisory environment. This final rule only addresses anticipated shortfalls brought on by increased OCC supervisory responsibilities, changes in the industry

and increased costs since 1984, the year of the last assessment increase.

**Supervisory Environment Demands Additional Resources**

The OCC serves the national interest by maintaining and promoting a system of bank supervision and regulation that promotes safety and soundness by requiring that national banks adhere to sound management principles and comply with the law. The financial services environment demands adequate resources for the OCC to maintain prudent levels of supervision. Examiner-related expenses account for approximately 80 percent of the OCC's increased costs since 1983. The OCC has hired additional examiners, provided needed training for experienced examiners, and enhanced its technological capabilities. This enhanced examiner force is needed to address the OCC's responsibilities, as particularly affected by the following external factors:

(a) The condition of many national banks has deteriorated. In 1987, bank profitability stabilized after falling in each of the preceding six years. Bank failures and the number of problem banks continue at high levels. Currently, 17 percent of the national banking system's assets and 22 percent of national banks are receiving special supervisory attention. Weaknesses in the energy and certain real estate sectors of the economy, as well as continued difficulties with foreign debt exposure, indicate continued difficulties for national banks.

(b) Since 1984, new OCC supervisory responsibilities have been mandated by the Competitive Equality Banking Act of 1987 (Pub. L. 100-86, 101 Stat. 552), the Government Securities Act of 1986 (Pub. L. 99-571, 100 Stat. 3208), the Money Laundering Control Act of 1986 (Subtitle H of the Anti-Drug Abuse Act of 1986, Pub. L. 99-570, 100 Stat. 3207), and the Bank Bribery Amendments Act of 1985 (Pub. L. 99-370, 100 Stat. 779).

(c) The deregulation of depository institutions and the entry of banks into new financial activities have created a more complex banking environment requiring new skills on the part of the OCC's staff and increased OCC technological capabilities.

**Decreased Asset Growth**

The OCC's assessment income is a function of three factors: (1) The level of nominal national bank assets, (2) the distribution of these assets over different size categories of national banks, and (3) the measured rate of inflation that is used to index the

assessment schedule. Primary among these factors is the rate of growth of bank assets. If there is no growth in assets, then assessment income will not increase beyond the small amount attributable to the indexation for inflation.

As a result of economic trends and conditions in the financial services industry, the current and projected growth rates in national bank assets have fallen dramatically. In the early 1980s, national bank assets grew at an annual rate of 7.0 percent or higher. In 1986, the growth rate fell to 6.6 percent and to less than 2.0 percent in 1987, the lowest rate since 1948. The OCC's assessment income in 1988 grew by only 1.8 percent.

#### Legal Criteria

Under 12 U.S.C. 482, assessments must be in proportion to the assets or resources of the bank. The annual rate must be the same for all banks of the same size; however, banks examined more than twice in a single calendar year must pay for any additional examinations.

The basic characteristics (*i.e.*, use of asset brackets with declining marginal rates) of the OCC assessment schedule were instituted in 1976, continued in 1984, and are used again today. This final rule does not alter those characteristics, which were approved by the United States Court of Appeals for the Eighth Circuit in *First National Bank of Milaca v. Heimann*, 572 F.2d 1244 (8th Cir. 1978) ("*Milaca*"). The court held that the OCC's 1976 revision complied with the requirements of 12 U.S.C. 482.

Various legal criteria imposed by 12 U.S.C. 482 and the *Milaca* decision limit the OCC's options with regard to the range of available assessment procedures. For example, 12 U.S.C. 482 provides for the assessment of an additional fee only if a bank is examined more than twice in a calendar year. The statute therefore prohibits the assessment of an additional fee for the second examination in a year, as one commenter suggested.

Another example of the statutory constraints imposed upon the OCC is that the current statute does not appear to allow the OCC to exempt rural banks, banks that suffer from increased competition, or banks in any other specialized category from the assessment increase, unless the exemption is related to assets or resources. No information that would permit the OCC to exempt banks in special categories has been received or identified. However, this and other suggestions from commenters will be referred to the OCC Comprehensive

Revenue Study Task Force for further consideration. That Task Force is described later in this preamble.

Some commenters suggested that assessments be based upon the actual number of hours or resources expended in supervising an institution. The current statute does not appear to allow the OCC to implement that suggestion unless it can be directly related to bank assets or resources. Nevertheless, this suggestion, as with other suggestions, will be referred to the OCC Comprehensive Revenue Study Task Force for further consideration.

#### Comments Received

The OCC received 225 comments in response to the proposal. The commenters were national banks, their directors, officers, and employees, trade organizations and a United States Senator. Most commenters opposed the proposed assessment increase. The commenters' concerns fell into four categories of issues, and, in some instances, the commenters suggested alternative methods to resolve those issues. Commenters asserted: That healthy banks should not subsidize problem banks; that their banks were not examined during the year but their assessments had increased; that the assessment schedule is discriminatory or burdensome to small banks; and that the OCC should reduce its expenses.

#### Issues Raised

##### *Healthy Banks Should Not Subsidize Problem Banks*

Approximately 10 percent of the commenters suggested that the current assessment methodology requires well-run banks to pay some of the costs of special supervisory attention given to problem banks. The commenters strongly urged that troubled banks be assessed higher fees, due to the greater level of OCC resources devoted to supervising these banks.

Well-run banks subsidize problem banks. However, it is not clear that 12 U.S.C. 482 allows the OCC to charge higher assessments to those banks that receive disproportionate attention from the OCC, unless a relationship between those banks and bank assets or resources can be shown. The OCC has received no strong evidence thus far that would clearly establish this relationship. However, this suggestion, as with other commenter suggestions, will be referred to the OCC Comprehensive Revenue Study Task Force for further consideration.

##### *Banks Not Examined But Assessments Increased*

Several commenters expressed concern that their banks receive fewer on-site examinations than in the past, but their assessments have increased.

The OCC is aware of this perceived inequity. The OCC's mission is to promote safety and soundness by requiring that national banks adhere to sound management principles and comply with the law. Fulfillment of this mission requires the proper allocation of the OCC's limited supervisory resources. One OCC initiative in this regard has been the increased use of off-site monitoring and concentration of resources on those institutions that present the greatest risk to the system.

The OCC believes it has developed a better approach to bank supervision than the previous practice of examining all banks on a fixed schedule. Under the OCC's present procedures, the frequency and depth of on-site bank supervision is a direct function of the risk that any given institution presents to the safety and soundness of the entire system. Examiners now perform increased off-site monitoring, and both routine and special on-site supervision are scheduled to utilize the OCC's resources more efficiently.

As a result, well-run community banks receive less on-site supervision. However, in a departure from past practice, all banks receive continuous off-site monitoring through an off-site "portfolio approach" to bank supervision. Under this supervisory method, each bank is assigned to at least one national bank examiner who monitors the bank and its environment on a continuous off-site basis. Therefore, the amount of on-site supervision by itself is not an accurate indicator of the amount of supervision the bank receives.

##### *Assessment Schedule Is Discriminatory to Small Banks*

Most commenters felt that small banks pay a disproportionate share of OCC assessments relative to their actual cost of supervision.

The OCC employs a system of cost accounting that attributes direct supervision costs to banks based on the hours spent on each bank by OCC staff. Indirect costs are allocated to the banks in the same proportions as the direct costs. The OCC, by using that system, has analyzed the relative cost coverage of national banks by asset size. The analysis indicates that banks in the four asset brackets under \$185 million, on average, pay 51 percent of their cost of

supervision. Banks in the six asset brackets over \$185 million, on average, pay 164 percent of their cost of supervision.

While there is variation within each category, the averages clearly indicate that small banks, as a group, are not discriminated against; rather, the cost of their supervision is subsidized by larger banks. This subsidy was recognized by the Eighth Circuit in *Milaca*. 572 F.2d at 1248.

The final rule maintains the current distribution of assessment burden, which is favorable to small banks, since the 14 percent increase in marginal rates results in the same proportional increase for all banks.

Some commenters suggested that a progressive fee or flat fee schedule be adopted in lieu of the regressive schedule now in use and approved by the *Milaca* court. Other commenters suggested that assessment fees should more accurately reflect the actual cost of supervising large and merged banks. Both of these suggestions seem to be based upon the commenters' belief that small banks subsidize larger institutions. Relative cost coverage data does not support that belief.

A flat fee schedule and a progressive schedule would increase the large banks' current subsidy of small banks. Alternatively, if the assessment schedule more accurately reflected the supervision costs attributable to large and merged banks, the subsidy would be reduced and the assessments levied upon small banks would rise dramatically.

Finally, some commenters suggested including off-balance-sheet activities in the assessment calculation. The OCC does incur expenses attendant to the supervision of off-balance-sheet activities. However, these activities are usually conducted by large banks, which already subsidize small banks. Effective assessment of off-balance-sheet activities requires further study. This suggestion, as well as various other suggestions, will be referred to the OCC Comprehensive Revenue Study Task Force for further consideration.

#### *OCC Should Reduce Expenses*

Most commenters questioned whether the OCC has been sufficiently diligent in controlling or cutting costs. As explained earlier in this preamble, throughout the 1980s the OCC has faced continued, increased resource demands in most areas, including operating expenses, additional staff and training. The OCC has cut costs, but increased resource demands have exceeded the OCC's cost cutting efforts.

In the early 1980s, the OCC adopted a new supervisory strategy that improved its ability to achieve its mission, and that utilized its resources more effectively. This strategy involves off-site monitoring of bank performance on a continuous basis, and focuses supervision on the components of the system that present the greatest risk.

Indicators of the OCC's cost reductions that result from the implementation of the supervisory approach are:

(a) Increased efficiency: Under the prior supervisory scheme, the OCC would have needed a staff of more than 4,000. With the new supervisory approach, the OCC's staff level has been held to 3,250.

(b) Lower travel costs: The off-site procedures have resulted in a reduction in average examiner travel cost. More importantly, reduced examiner travel time substitute productive off-site supervisory hours for unproductive travel time.

Another example of cost control is demonstrated by the way the OCC provides computer capability to its work force. Prior to 1986, computer services were provided through a service bureau. Under the supervisory approach, examiners use automated services to facilitate analysis. Continued use of the service bureau would have been very costly. To contain costs, the OCC developed its own data center in 1986. The OCC will save \$5.6 million over the first five years of the center's operation. More importantly, the OCC can meet additional data processing demands without significant increases in costs.

The cost containment efforts have been obscured by the increased demands of the OCC's workload and the complexity of that workload. Without the OCC's efforts to contain costs, an even higher assessment increase would be required. In 1982, the OCC's real (inflation adjusted) cost to supervise \$1 billion of bank assets was \$105,000. In 1987, that cost was \$97,000. This cost decrease was achieved despite the increase in the OCC's workload over the same period. If the cost decrease had not been achieved, an assessment increase of 22 percent or \$16 million would be needed as opposed to the 14 percent being implemented.

The increased resource demands preclude limiting the assessment increase to the increase in inflation as suggested by several commenters. The increased resource demands greatly exceed inflation. The OCC has cut its expenses, but cannot cut costs to the point where necessary and prudent operations are affected. That action would be inconsistent with the OCC's

mission to promote safety and soundness by requiring that national banks adhere to sound management principles and comply with the law.

#### **OCC Comprehensive Revenue Study**

Innovation and change in the financial services industry require that the OCC maintain flexible managerial, technological and supervisory postures. As a result, the current assessment practices may need to be revised. Therefore, the OCC believes that a study of its revenue generation methodology is required. The underlying statutory and regulatory basis of the methodology will be reviewed to determine its adequacy to cover long-term needs and to allocate appropriately the costs of supervision.

Consequently, the OCC has convened a Comprehensive Revenue Study Task Force charged with reviewing its revenue policy and structure. The OCC must ensure that any new revenue policy and structure enable it, over time, to accomplish its mission. A comprehensive review of all current and potential revenue sources will be conducted. The Task Force will make recommendations regarding a revenue-generation methodology that accommodates needed supervisory changes in response to legislative, regulatory and economic trends. These recommendations may require statutory and regulatory changes. The OCC will inform national banks of the developments of that study.

#### **OCC Action**

Prompt action is needed to prevent a revenue shortfall in 1989 and beyond. To meet its revenue requirements, the OCC is issuing this final rule to revise the Part 8 assessment schedule to reflect a 14 percent increase commencing with the assessment due on January 31, 1989. In keeping with the present schedule, the revised assessment schedule maintains marginal assessment rates that decline as bank assets increase and asset brackets that are indexed annually to changes in the Gross National Product Implicit Price Deflator.

The assessment increase is necessary to avoid deficits, which may impede the OCC's ability to fulfill its statutory, regulatory and supervisory responsibilities. The assessment increase is the minimum amount necessary to support the OCC's increasing and evolving supervisory responsibilities. The effect of the 14 percent assessment increase on the earnings of national banks will be extremely small. For all national banks, the median return on assets ("ROA")

currently is .7834 percent. Because of this increase, this median return would fall by 2.4 tenths of a basis point to .7810 percent. The impact on small national banks is also low. For banks in the \$15-\$85 million category, the median ROA will change from .7476 percent to .7449 percent. The revision is consistent with the requirements of 12 U.S.C. 482, because the new assessment schedule treats banks of similar asset size in the same manner, and is necessary for the OCC to recover its costs.

#### Executive Order 12291

It is certified that this final rule does not meet any of the conditions set forth in Executive Order 12291 for designation as a major rule. Consequently, a

regulatory impact statement was not prepared.

#### Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), it is certified that this final rule will not have a significant impact on a substantial number of small entities.

#### List of Subjects in 12 CFR Part 8

National banks, Banking, Assessments, Fees.

#### Authority and Issuance

For the reasons set forth above, Chapter I of Part 8 of Title 12 of the Code of Federal Regulations is amended as follows:

#### PART 8—[AMENDED]

1. The authority citation for 12 CFR Part 8 is revised to read as follows:

Authority: 12 U.S.C. 481, 482 and 3102, and 26 D.C. Code 102.

2. Section 8.1 is revised to read as follows:

#### § 8.1 Scope and application.

The assessments contained in this part are made pursuant to the authority contained in 12 U.S.C. 481, 482 and 3102 and in 26 D.C. Code 102.

3. The table in § 8.2(a) is revised to read as follows:

#### § 8.2 Semiannual assessment.

(a) \* \* \*

If the bank's total assets (consolidated domestic and foreign subsidiaries) are:		The semiannual assessment is:		
Over—	But not over—	This amount—	Plus	Of excess over—
Column A	Column B	Column C	Column D	Column E
Million 0 \$X <sub>1</sub> X <sub>2</sub> X <sub>3</sub> X <sub>4</sub> X <sub>5</sub> X <sub>6</sub> X <sub>7</sub> X <sub>8</sub> X <sub>9</sub>	Million \$X <sub>1</sub> X <sub>2</sub> X <sub>3</sub> X <sub>4</sub> X <sub>5</sub> X <sub>6</sub> X <sub>7</sub> X <sub>8</sub> X <sub>9</sub>	0 \$Y <sub>1</sub> Y <sub>2</sub> Y <sub>3</sub> Y <sub>4</sub> Y <sub>5</sub> Y <sub>6</sub> Y <sub>7</sub> Y <sub>8</sub> Y <sub>9</sub>	.0011400 .0001425 .0001140 .0000741 .0000627 .0000513 .0000456 .0000388 .0000365 .0000239	Million 0 \$X <sub>1</sub> X <sub>2</sub> X <sub>3</sub> X <sub>4</sub> X <sub>5</sub> X <sub>6</sub> X <sub>7</sub> X <sub>8</sub> X <sub>9</sub>

\* \* \* \* \*

Date: November 29, 1988.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 88-27735 Filed 11-30-88; 8:45 am]

BILLING CODE 4810-33-M



# Reader Aids

Federal Register

Vol. 53, No. 231

Thursday, December 1, 1988

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## LIST OF PUBLIC LAWS

**Note:** The list of public laws enacted during the second session of the 100th Congress has been completed.

**Last List November 30, 1988**

The list will be resumed when bills are enacted into public law during the first session of the 101st Congress, which convenes on January 3, 1989. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

In the **List of Public Laws** printed in the **Federal Register** on November 25, 1988, S. 2840, Public Law 100-696, was incorrectly printed as H.R. 2840.

## FEDERAL REGISTER PAGES AND DATES, DECEMBER

48505-48628..... 1

## TABLE OF EFFECTIVE DATES AND TIME PERIODS—DECEMBER 1988

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these

dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

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December 2	December 19	January 3	January 17	January 31	March 2
December 5	December 20	January 4	January 19	February 3	March 6
December 6	December 21	January 5	January 23	February 6	March 6
December 7	December 22	January 6	January 23	February 6	March 7
December 8	December 23	January 9	January 23	February 6	March 8
December 9	December 27	January 9	January 23	February 7	March 9
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December 19	January 3	January 18	February 2	February 17	March 20
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December 21	January 5	January 23	February 6	February 21	March 21
December 22	January 6	January 23	February 6	February 21	March 22
December 23	January 9	January 23	February 6	February 21	March 23
December 27	January 11	January 26	February 10	February 27	March 27
December 28	January 12	January 27	February 13	February 27	March 28
December 29	January 13	January 30	February 13	February 27	March 29
December 30	January 17	January 30	February 13	February 28	March 30